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Part Cross-References

Nonmunicipal corporations, Art. XIII, sec. 1, Mont. Const.

35-1-101. Renumbered 35-1-112. Sec. 221, Ch. 368, L. 1991.

35-1-102 through 35-1-108. Repealed. Sec. 216, Ch. 368, L. 1991.

Compiler's Comments

Histories of Repealed Sections:

35-1-102. En. Sec. 2, Ch. 300, L. 1967; amd. Sec. 1, Ch. 152, L. 1969; R.C.M. 1947, 15-2202; amd. Sec. 1, Ch. 475, L. 1981; amd. Sec. 2, Ch. 273, L. 1989.

35-1-103. En. Sec. 136, Ch. 300, L. 1967; R.C.M. 1947, 15-22-136(part).

35-1-104. En. Sec. 137, Ch. 300, L. 1967; R.C.M. 1947, 15-22-137.

35-1-105. En. Sec. 139, Ch. 300, L. 1967; R.C.M. 1947, 15-22-139.

35-1-106. En. Sec. 138, Ch. 300, L. 1967; R.C.M. 1947, 15-22-138.

35-1-107. En. Sec. 3, Ch. 300, L. 1967; R.C.M. 1947, 15-2203.

35-1-108. En. Sec. 4, Ch. 300, L. 1967; R.C.M. 1947, 15-2204; amd. Sec. 2, Ch. 475, L. 1981.

35-1-109. Renumbered 35-1-119. Sec. 221, Ch. 368, L. 1991.

35-1-110. Repealed. Sec. 216, Ch. 368, L. 1991.

History: En. Sec. 6, Ch. 300, L. 1967; R.C.M. 1947, 15-2206; amd. Sec. 1, Ch. 202, L. 1979.

35-1-111. Repealed. Sec. 216, Ch. 368, L. 1991.

History: En. Sec. 133, Ch. 300, L. 1967; R.C.M. 1947, 15-22-133.

35-1-112. Short title. This chapter shall be known and may be cited as the "Montana Business Corporation Act".

History: En. Sec. 1, Ch. 300, L. 1967; R.C.M. 1947, 15-2201; Sec. 35-1-101, MCA 1989; redes. 35-1-112 by Sec. 221, Ch. 368, L. 1991.

35-1-113. Definitions. As used in this chapter, the following definitions apply:

(1) "Articles of incorporation" include amended and restated articles of incorporation and articles of merger.

(2) "Authorized shares" means the shares of all classes that a domestic or foreign corporation is authorized to issue.

(3) "Conspicuous" means written so that a reasonable person against whom the writing is to operate should have noticed it. For example, printing in italics, boldface, or contrasting color or typing in capitals or underlining is conspicuous.

(4) "Corporation" or "domestic corporation" means a corporation for profit that is not a foreign corporation and that is incorporated under or subject to the provisions of this chapter.

(5) "Deliver" includes mail.

(6) "Distribution" means a direct or indirect transfer of money or other property, except its own shares, or an incurrence of indebtedness, by a corporation to or for the benefit of its shareholders in respect of any of its shares. A distribution may be in the form of a declaration or payment of a dividend; a purchase, redemption, or other acquisition of shares; a distribution of indebtedness; or other form.

(7) "Effective date of notice" means the date determined as provided in 35-1-116.

(8) "Employee" includes an officer but not a director. A director may accept duties that make that director an employee.

(9) "Entity" includes:

(a) a corporation and a foreign corporation;

(b) a not-for-profit corporation;

(c) a profit and a not-for-profit unincorporated association;

(d) a business trust, estate, partnership, trust, and two or more persons having a joint or common economic interest; and

(e) a state, the United States, or a foreign government.

(10) "Foreign corporation" means a corporation for profit incorporated under a law other than the law of this state.

(11) "Governmental subdivision" includes an authority, county, district, and city or town.

(12) "Includes" denotes a partial definition.

(13) "Individual" includes the estate of an incompetent or deceased individual.

(14) "Means" denotes an exhaustive definition.

(15) "Notice" means notice as provided in 35-1-116.

(16) "Person" includes an individual and an entity.

(17) "Principal office" means the office, whether in-state or out-of-state, that is designated in the annual report as the office where the principal executive offices of a domestic or foreign corporation are located.

(18) "Proceeding" includes a civil suit and a criminal, administrative, and investigatory action.

(19) "Record date" means the date established under 35-1-535, 35-1-618 through 35-1-630, and 35-1-712 or under 35-1-516 through 35-1-533 and 35-1-541 through 35-1-548 on which a corporation determines the identity of its shareholders and their shareholdings for purposes of this chapter. The determination must be made as of the close of business on the record date unless another time for determination is specified when the record date is fixed.

(20) "Secretary" means the corporate officer to whom the board of directors has delegated responsibility under 35-1-441 for custody of the minutes of the meetings of the board of directors, for custody of the minutes of the shareholders' meetings, and for authenticating records of the corporation.

(21) "Share" means the unit into which the proprietary interests in a corporation are divided.

(22) "Shareholder" means the person in whose name shares are registered in the records of a corporation or the beneficial owner of shares to the extent of the rights granted by a nominee certificate on file with a corporation.

(23) "State", when referring to a part of the United States, includes a state, commonwealth, territory, or insular possession of the United States and the agencies and governmental subdivisions of the entities listed.

(24) "Subscriber" means a person who subscribes for shares in a corporation, whether before or after incorporation.

(25) "United States" includes a district, an authority, a bureau, a commission, a department, and any other agency of the United States.

(26) "Voting group" means shares of one or more classes or series that under the articles of incorporation of this chapter are entitled to vote and be counted together collectively on a matter at a meeting of shareholders. All shares entitled by the articles of incorporation or this chapter to vote generally on the matter are for that purpose a single voting group.

History: **En. Sec. 1, Ch. 368, L. 1991.**

35-1-114. Purposes. (1) Each corporation incorporated under this chapter has the purpose of engaging in any lawful business unless a more limited purpose is set forth in the articles of incorporation.

(2) A corporation organized under another statute of this state may incorporate under this chapter only if the incorporation is permitted by and subject to all limitations of the other statute.

(3) Subject to the limitation in subsection (2), corporations may be organized under this chapter for any lawful purpose or purposes except for the purpose of banking or insurance.

History: **En. Sec. 22, Ch. 368, L. 1991.**

Cross-References

Banks — formation and reorganization, Title 32, ch. 1, part 3.

Certificate of authority for insurance transactions, 33-2-101.

35-1-115. General powers. Unless its articles of incorporation provide otherwise, each corporation has perpetual duration and succession in its corporate name and, unless otherwise prohibited by law, has the same powers as an individual to do all things necessary or convenient to carry out its business and affairs, including without limitation, the power:

(1) to sue and be sued, complain, and defend in its corporate name;

(2) to have a corporate seal, which may be altered at will, and to use it or a facsimile of the seal by impressing or affixing it or in any other manner reproducing it;

(3) to make and amend bylaws, consistent with its articles of incorporation or with the laws of this state, for managing the business and regulating the affairs of the corporation;

(4) to purchase, receive, lease, or otherwise acquire and to own, hold, improve, use, and otherwise deal with real or personal property or any legal or equitable interest in property, wherever located;

(5) to sell, convey, mortgage, pledge, lease, exchange, and otherwise dispose of all or any part of its property;

(6) to purchase, receive, subscribe for, or otherwise acquire any other entity; to own, hold, vote, use, sell, mortgage, lend, pledge, or otherwise dispose of any other entity; and to deal in and with shares or other interests in, or obligations of any other entity;

(7) to make contracts and guarantees; to incur liabilities; to borrow money; to issue its notes, bonds, and other obligations, which, if authorized by the articles of incorporation, may be convertible into or include the option to purchase other securities of the corporation; and to secure any of its obligations by mortgage or pledge of any of its property, franchises, or income;

(8) to lend money, invest and reinvest its funds, and receive and hold real and personal property as security for repayment;

(9) to be a promoter, partner, member, associate, or manager of any partnership, joint venture, trust, or other entity;

(10) to conduct its business, locate offices, and exercise the powers granted by this chapter in the state or out of the state;

(11) to elect directors and appoint officers, employees, and agents of the corporation; to define their duties; to fix their compensation; and to lend them money and credit;

(12) to pay pensions and establish pension plans, pension trusts, profit-sharing plans, share bonus plans, share option plans, and benefit or incentive plans for any or all of its current or former directors, officers, employees, and agents;

(13) to make donations for the public welfare or for charitable, religious, scientific, or educational purposes and, in time of war, to make donations in aid of war activities;

(14) to transact any lawful business that will aid governmental policy; and

(15) to make payments or donations or to do any other act that is consistent with law and that furthers the business and affairs of the corporation.

History: En. Sec. 23, Ch. 368, L. 1991; amd. Sec. 1, Ch. 249, L. 1993.

Cross-References

Prohibited contributions from corporations for candidates or political parties, 13-35-227.

35-1-116. Notice. (1) Notice under this chapter must be in writing unless oral notice is reasonable under the circumstances.

(2) Notice may be communicated in person; by telephone, telegraph, teletype, facsimile, or other form of wire or wireless communication; or by mail or private carrier. If these forms of personal notice are impracticable, notice may be communicated by a newspaper of general circulation in the area where it is published or by radio, television, or other form of public broadcast communication.

(3) Written notice by a domestic or foreign corporation to its shareholders, if in a comprehensible form, is effective when mailed if it is mailed postpaid and correctly addressed to the shareholder's address shown in the corporation's current record of shareholders.

(4) Written notice to a domestic or foreign corporation authorized to transact business in this state, may be addressed to:

(a) its registered agent at its registered office; or

(b) the corporation or its secretary at its principal office as shown in its most recent annual report or, in the case of a foreign corporation that has not yet delivered an annual report, in its application for a certificate of authority.

(5) Except as provided in subsections (3) and (4), written notice, if in a comprehensible form, is effective at the earliest of the following:

(a) when received;

(b) 5 days after its deposit in the United States mail, as evidenced by the postmark, if mailed postpaid with correct postage; or

(c) on the date shown on the return receipt, if sent by certified mail, return receipt requested, and the receipt is signed by or on behalf of the addressee.

(6) Oral notice is effective when communicated if it is communicated in a comprehensible manner.

(7) If this chapter prescribes notice requirements for particular circumstances, those requirements govern. If articles of incorporation or bylaws prescribe notice requirements that are consistent with this section or other provisions of this chapter, those requirements govern.

History: En. Sec. 2, Ch. 368, L. 1991.

35-1-117. Ultra vires. (1) Except as provided in subsection (2), the validity of corporate action may not be challenged on the ground that the corporation lacks or lacked power to act.

(2) A corporation's power to act may be challenged:

(a) in a proceeding by a shareholder against the corporation to enjoin the act; or

(b) in a proceeding by the corporation, directly, derivatively, or through a receiver, trustee, or other legal representative, against an incumbent or former director, officer, employee, or agent of the corporation.

(3) In a shareholder's proceeding under subsection (2)(a) to enjoin an unauthorized corporate act, the court may:

(a) enjoin or set aside the act, if equitable and if all affected persons are parties to the proceeding; and

(b) award damages for loss, other than anticipated profits, suffered by the corporation or another party because of enjoining the unauthorized act.

History: En. Sec. 24, Ch. 368, L. 1991.

Cross-References

Dissolution and liquidation, Title 35, ch. 1, part 9.

Involuntary dissolution by Secretary of State, Title 35, ch. 6, part 1.

Reinstatement, Title 35, ch. 6, part 2.

35-1-118. Reservation of power to amend or repeal. The legislature has power to amend or repeal all or part of this chapter at any time, and all domestic and foreign corporations subject to this chapter are governed by the amendment or repeal.

History: En. Sec. 3, Ch. 368, L. 1991.

35-1-119. Liability of and to ostensible corporations. All persons who assume to act as a corporation without authority so to do shall be jointly and severally liable for all debts and liabilities incurred or arising as a result thereof.

History: En. Sec. 135, Ch. 300, L. 1967; R.C.M. 1947, 15-22-135; amd. Sec. 3, Ch. 475, L. 1981; Sec. 35-1-109, MCA 1989; redes. 35-1-119 by Sec. 221, Ch. 368, L. 1991.

Cross-References

Multiple defendants jointly and severally liable — right of contribution, 27-1-703.

Part 2

Formation — Articles of Incorporation — Bylaws

Part Cross-References

Certificate of existence or authorization, 35-1-1312.

Formation, articles of incorporation, bylaws, and amendments of nonprofit corporations, Title 35, ch. 2, part 2.

Formation and operation of religious corporations sole, Title 35, ch. 3, part 2.

Organization and regulation of professional service corporations, Title 35, ch. 4, part 2.

Formation and operation of business trusts, Title 35, ch. 5, part 2.

Formation of limited liability companies, Title 35, ch. 8, part 2.

Formation of limited partnerships, Title 35, ch. 12, part 6.

Formation of mining partnerships, Title 35, ch. 13, part 1.

Formation, articles of incorporation, and bylaws of cooperative associations, Title 35, ch. 15, part 2.

Formation of agricultural associations, Title 35, ch. 16, part 2.

Formation of cooperative agricultural marketing associations, Title 35, ch. 17, part 2.

Formation, articles of incorporation, and bylaws of rural cooperative utilities, Title 35, ch. 18, part 2.

Formation of cemetery associations, Title 35, ch. 20, part 1.

35-1-201 through 35-1-214. Repealed. Sec. 216, Ch. 368, L. 1991.

Compiler's Comments

Histories of Repealed Sections:

35-1-201. En. Sec. 47, Ch. 300, L. 1967; R.C.M. 1947, 15-2247; amd. Sec. 11, Ch. 131, L. 1983; amd. Sec. 9, Ch. 174, L. 1983.

35-1-202. En. Sec. 48, Ch. 300, L. 1967; R.C.M. 1947, 15-2248; amd. Sec. 6, Ch. 475, L. 1981; amd. Sec. 1, Ch. 559, L. 1987.

35-1-203. En. Sec. 49, Ch. 300, L. 1967; R.C.M. 1947, 15-2249; amd. Sec. 12, Ch. 131, L. 1983.

35-1-204. En. Sec. 50, Ch. 300, L. 1967; R.C.M. 1947, 15-2250.

35-1-205. En. Sec. 51, Ch. 300, L. 1967; R.C.M. 1947, 15-2251.

35-1-206. En. Sec. 52, Ch. 300, L. 1967; R.C.M. 1947, 15-2252; amd. Sec. 7, Ch. 475, L. 1981.

35-1-207. En. Sec. 53, Ch. 300, L. 1967; R.C.M. 1947, 15-2253; amd. Sec. 8, Ch. 475, L. 1981.

35-1-208. En. Sec. 54, Ch. 300, L. 1967; R.C.M. 1947, 15-2254; amd. Sec. 9, Ch. 475, L. 1981.

35-1-209. En. Sec. 55, Ch. 300, L. 1967; R.C.M. 1947, 15-2255; amd. Sec. 10, Ch. 475, L. 1981; amd. Sec. 13, Ch. 131, L. 1983; amd. Sec. 10, Ch. 174, L. 1983.

35-1-210. En. Sec. 56, Ch. 300, L. 1967; R.C.M. 1947, 15-2256; amd. Sec. 14, Ch. 131, L. 1983.

35-1-211. En. Sec. 57, Ch. 300, L. 1967; R.C.M. 1947, 15-2257; amd. Sec. 11, Ch. 475, L. 1981.

35-1-212. En. Sec. 59, Ch. 300, L. 1967; R.C.M. 1947, 15-2259; amd. Sec. 12, Ch. 475, L. 1981; amd. Sec. 15, Ch. 131, L. 1983; amd. Sec. 11, Ch. 174, L. 1983.

35-1-213. En. Sec. 58, Ch. 300, L. 1967; R.C.M. 1947, 15-2258(part); amd. Sec. 13, Ch. 475, L. 1981; amd. Sec. 16, Ch. 131, L. 1983; amd. Sec. 12, Ch. 174, L. 1983; amd. Sec. 1, Ch. 456, L. 1983; amd. Sec. 1, Ch. 445, L. 1985.

35-1-214. En. Sec. 25, Ch. 300, L. 1967; R.C.M. 1947, 15-2225; amd. Sec. 14, Ch. 475, L. 1981.

35-1-215. Incorporators. One or more persons may act as the incorporator or incorporators of a corporation by delivering articles of incorporation to the secretary of state for filing.

History: En. Sec. 16, Ch. 368, L. 1991.

Cross-References

Secretary of State to establish filing fees for articles of incorporation, 35-1-1206.

35-1-216. Articles of incorporation. (1) The articles of incorporation must set forth:

(a) a corporate name for the corporation that satisfies the requirements of 35-1-308;

(b) the number of shares the corporation is authorized to issue;

(c) (i) the street address of the corporation's initial registered office and, if different, the mailing address; and

(ii) the name of its initial registered agent at that office; and

(d) the name and address of each incorporator.

(2) The articles of incorporation may set forth:

(a) the names and addresses of the individuals who are to serve as the initial directors;

(b) provisions consistent with law regarding:

(i) the purpose or purposes for which the corporation is organized;

(ii) managing the business and regulating the affairs of the corporation;

(iii) defining, limiting, and regulating the powers of the corporation, its board of directors, and shareholders;

(iv) a par value for authorized shares or classes of shares; and

(v) the imposition of personal liability on shareholders for the debts of the corporation to a specified extent and upon specified conditions;

(c) any provision that under this chapter is required or permitted to be set forth in the bylaws; and

(d) a provision eliminating or limiting the liability of a director to the corporation or its shareholders for money damages for any actions taken or any failure to take any action, as a director, except liability for:

(i) the amount of a financial benefit received by a director to which the director is not entitled;

(ii) an intentional infliction of harm on the corporation or the shareholders;

(iii) a violation of 35-1-713; or

(iv) an intentional violation of criminal law.

(3) The articles of incorporation are not required to set forth any of the corporate powers enumerated in this chapter.

History: En. Sec. 17, Ch. 368, L. 1991.

35-1-217. Filing requirements. All of the following requirements must be met before a document is entitled to be filed under this section by the secretary of state:

(1) A document that is required or permitted by this chapter to be filed in the office of the secretary of state must satisfy the requirements of this section and of any other section that adds to or varies these requirements.

(2) The document must contain the information required by this chapter. It may contain other information as well.

(3) The document must be typewritten or printed.

(4) The document must be in the English language. A corporate name need not be in English if it is written in English letters or Arabic or Roman numerals. The certificate of existence required of foreign corporations need not be in English if it is accompanied by a reasonably authenticated English translation.

(5) The document must be executed:

(a) by the chairman of the board of directors of a domestic or foreign corporation, by its president, or by another of its officers;

(b) if directors have not been selected or the corporation has not been formed, by an incorporator; or

(c) if the corporation is in the hands of a receiver, trustee, or other court-appointed fiduciary, by that fiduciary.

(6) The person executing the document shall sign it and state beneath or opposite the person's signature the person's name and the capacity in which the person signs. The document may but need not contain the corporate seal, an attestation by the secretary or an assistant secretary, and an acknowledgment, verification, or proof.

(7) The document must be in or on the prescribed form if the secretary of state has prescribed a mandatory form for the document under 35-1-1308.

(8) The document must be delivered to the office of the secretary of state for filing and must be accompanied by:

(a) one copy, except as provided in 35-1-315 and 35-1-1036;

(b) the correct filing fee; and

(c) any franchise tax, license fee, or penalty required by this chapter, rules promulgated under this chapter, or other law.

History: En. Sec. 4, Ch. 368, L. 1991.

Cross-References

Articles of dissolution, 35-1-933.

Filing fees, 35-1-1206.

35-1-218. Facsimile filing — requirements — liability. (1) The secretary of state shall treat a facsimile copy of a document that is required or permitted to be filed under this chapter and the signatures on the facsimile copy in the same manner as an original for purposes of this chapter. If all other requirements are met, the date of filing relates back to the date of receipt of the facsimile copy.

(2) A person who files a false document by facsimile copy is liable to an aggrieved party for three times the amount of damages resulting from the filing of the false document.

History: En. Sec. 5, Ch. 368, L. 1991; amd. Sec. 5, Ch. 290, L. 1997.

Cross-References

Assumed business name — filing of facsimile copy, 30-13-221.

Trademarks — filing of facsimile copy, 30-13-341.

Nonprofit corporations — facsimile filing, 35-2-120.

Limited liability company — facsimile filing, 35-8-207.

Partnerships — facsimile filing, 35-10-112.

Limited partnerships — facsimile filing, 35-12-615.

Cooperative associations — facsimile filing, 35-15-211.

35-1-219. Effective time and date of document. (1) Except as provided in 35-1-221 and subsection (2) of this section, a document accepted for filing is effective:

(a) at the time of filing on the date it is filed, as evidenced by the secretary of state's date and time endorsement on the original document; or

(b) at the time specified in the document as its effective time on the date it is filed.

(2) A document may specify a delayed effective time and date, and if it does so the document becomes effective at the time and date specified. If a delayed effective date but no time is specified, the document is effective at the close of business on that date. A delayed effective date for a document may not be later than 90 days after the date it is filed.

History: En. Sec. 9, Ch. 368, L. 1991.

35-1-220. Incorporation. (1) Unless a delayed effective date is specified, the corporate existence begins when the articles of incorporation are filed.

(2) The secretary of state's filing of the articles of incorporation is conclusive proof that the incorporators have satisfied all conditions precedent to incorporation except in a proceeding by the state to cancel or revoke the incorporation or involuntarily dissolve the corporation.

History: En. Sec. 18, Ch. 368, L. 1991.

35-1-221. Correcting filed document. (1) A domestic or foreign corporation may correct a document filed by the secretary of state if the document contains an incorrect statement or was defectively executed, attested, sealed, verified, or acknowledged.

(2) A document is corrected by:

(a) preparing articles of correction that:

(i) describe the document including its filing date, or have attached a copy of the document;

(ii) specify the incorrect statement and the reason it is incorrect or the manner in which the execution was defective; and

(iii) correct the incorrect statement or defective execution; and

(b) delivering the articles to the secretary of state for filing.

(3) Articles of correction are effective on the effective date of the document they correct except as to persons relying on the uncorrected document and adversely affected by the correction. As to those persons, articles of correction are effective when filed.

History: En. Sec. 10, Ch. 368, L. 1991.

35-1-222. Organization of corporation. (1) After incorporation:

(a) if initial directors are named in the articles of incorporation, the initial directors shall hold an organizational meeting, at the call of a majority of the directors, to complete the organization of the corporation by appointing officers, adopting bylaws, and carrying on any other business brought before the meeting; or

(b) if initial directors are not named in the articles, the incorporator or incorporators shall hold an organizational meeting at the call of a majority of the incorporators:

(i) to elect directors and complete the organization of the corporation; or

(ii) to elect a board of directors who shall complete the organization of the corporation.

(2) Action required or permitted by this chapter to be taken by incorporators at an organizational meeting may be taken without a meeting if the action taken is evidenced by one or more written consents describing the action taken and signed by each incorporator.

(3) An organizational meeting may be held in the state or out of the state.

History: En. Sec. 19, Ch. 368, L. 1991.

35-1-223 and 35-1-224 reserved.

35-1-225. Authority to amend. (1) A corporation may amend its articles of incorporation at any time to add or change a provision that is required or permitted in the articles of incorporation or to delete a provision not required in the articles of incorporation. Whether a provision is required or permitted in the articles of incorporation is determined as of the effective date of the amendment.

(2) A shareholder of the corporation does not have a vested property right resulting from any provision in the articles of incorporation, including provisions relating to management, control, capital structure, dividend entitlement, or purpose or duration of the corporation.

History: En. Sec. 112, Ch. 368, L. 1991.

Cross-References

Shareholders' preemptive rights, 35-1-535.

Appeal from Secretary of State's refusal to file amended articles, 35-1-1310.

35-1-226. Amendment by board of directors. Unless the articles of incorporation provide otherwise, a corporation's board of directors may adopt one or more amendments to the corporation's articles of incorporation without shareholder action:

(1) to extend the duration of the corporation if it was incorporated at a time when limited duration was required by law;

(2) to delete the names and addresses of the initial directors;

(3) to delete the names and address of the initial registered agent or registered office if a statement of change is on file with the secretary of state;

(4) to change each issued and unissued authorized share of an outstanding class into a greater number of whole shares if the corporation has only shares of that class outstanding;

(5) to change the corporate name by substituting the word "corporation", "incorporated", "company", "limited" or the abbreviation "corp.", "inc.", "co.", or "ltd." for a similar word or abbreviation in the name or by adding, deleting, or changing a geographical attribution for the name; or

(6) to make any other change expressly permitted by this chapter to be made without shareholders' action.

History: En. Sec. 113, Ch. 368, L. 1991.

35-1-227. Amendment by board of directors and shareholders. (1) A corporation's board of directors may propose one or more amendments to the articles of incorporation for submission to the shareholders.

(2) For the amendment to be adopted:

(a) the board of directors shall recommend the amendment to the shareholders unless the board of directors determines that because of conflict of interest or other special circumstances it should make no recommendation and communicates the basis for its determination to the shareholders with the amendment; and

(b) the shareholders entitled to vote on the amendment shall approve the amendment as provided in subsection (5).

(3) The board of directors may condition its submission of the proposed amendment on any basis.

(4) The corporation shall notify each shareholder, whether or not entitled to vote, of the proposed shareholders' meeting in accordance with 35-1-520. The notice of meeting must also state that the purpose or one of the purposes of the meeting is to consider the proposed amendment and must contain or be accompanied by a copy or summary of the amendment.

(5) Unless this chapter, the articles of incorporation, or the board of directors acting pursuant to subsection (3) require a greater vote or a vote by voting groups, the amendment to be adopted must be approved by:

(a) a majority of the votes entitled to be cast on the amendment by any voting group with respect to which the amendment would create dissenters' rights; and

(b) the votes required by 35-1-528 and 35-1-529 by every other voting group entitled to vote on the amendment.

History: En. Sec. 114, Ch. 368, L. 1991.

35-1-228. Voting on amendments by voting groups. (1) The holders of the outstanding shares of a class are entitled to vote as a separate voting group, if shareholder voting is otherwise required by this chapter, on a proposed amendment if the amendment would:

(a) increase or decrease the aggregate number of authorized shares of the class;

(b) cause an exchange or reclassification of all or part of the shares of the class into shares of another class;

(c) cause an exchange or reclassification of or create the right of exchange of all or part of the shares of another class into shares of the class;

(d) change the designation, rights, preferences, or limitations of all or part of the shares of the class;

(e) change the shares of all or part of the class into a different number of shares of the same class;

(f) create a new class of shares having rights or preferences with respect to distributions or to dissolution that are prior, superior, or substantially equal to the shares of the class;

(g) increase the rights, preferences, or number of authorized shares of any class that, after giving effect to the amendment, have rights or preferences with respect to dissolution or to distributions that are prior, superior, or substantially equal to the shares of the class;

(h) limit or deny an existing preemptive right of all or part of the share of the class; or

(i) cancel or otherwise affect rights to distributions or dividends that have accumulated but have not yet been declared on all or part of the shares of the class.

(2) If a proposed amendment would affect a series of a class of shares in one or more of the ways described in subsection (1), the shares of that series are entitled to be voted as a separate voting group on the proposed amendment.

(3) If a proposed amendment that entitles two or more series of shares to be voted as separate voting groups under this section would affect those two or more series in the same or a substantially similar way, the shareholders of all the series affected must vote together as a single voting group on the proposed amendment.

(4) A class or series of shares is entitled to the voting rights granted by this section although the articles of incorporation provide that the shares are nonvoting shares.

History: **En. Sec. 115, Ch. 368, L. 1991.**

Cross-References

Voting entitlement of shares, 35-1-524.

Voting on merger or share exchange, 35-1-815.

Voting on sale of assets, 35-1-823.

Voting on voluntary dissolution, 35-1-932.

35-1-229. Amendment before issuance of shares. If a corporation has not yet issued shares, its incorporators or board of directors may adopt one or more amendments to the corporation's articles of incorporation.

History: **En. Sec. 116, Ch. 368, L. 1991.**

35-1-230. Articles of amendment. A corporation amending its articles of incorporation shall deliver to the secretary of state, for filing, articles of amendment setting forth:

(1) the name of the corporation;

(2) the text of each amendment adopted;

(3) if an amendment provides for an exchange, reclassification, or cancellation of issued shares, provisions for implementing the amendment if not contained in the amendment itself;

(4) the date of each amendment's adoption;

(5) if an amendment was adopted by the incorporators or board of directors without shareholders' action, a statement to that effect and that shareholders' action was not required; and

(6) if an amendment was approved by the shareholders:

(a) the designation, number of outstanding shares, number of votes entitled to be cast by each voting group entitled to vote separately on the amendment, and number of votes of each voting group indisputably represented at the meeting; and

(b) either the total number of votes cast for and against the amendment by each voting group entitled to vote separately on the amendment or the total number of undisputed votes cast for the amendment by each voting group that was sufficient for approval by that voting group.

History: En. Sec. 117, Ch. 368, L. 1991.

Cross-References

Amendment filing fees, 35-1-1206.

License fees based on number of shares authorized in articles, 35-1-1207.

Appeal from Secretary of State's refusal to file amended articles, 35-1-1310.

35-1-231. Restated articles of incorporation. (1) A corporation's board of directors may restate its articles of incorporation at any time with or without shareholders' action.

(2) The restatement may include one or more amendments to the articles of incorporation. If the restatement includes an amendment requiring shareholders' approval, it must be adopted as provided in 35-1-227.

(3) If the board of directors submits a restatement for shareholders' action, the corporation shall notify each shareholder, whether or not entitled to vote, of the proposed shareholders' meeting in accordance with 35-1-520. The notice must also state that the purpose or one of the purposes of the meeting is to consider the proposed restatement and must contain or be accompanied by a copy of the restatement that identifies any amendment or other change the restatement would make in the articles of incorporation.

(4) A corporation restating its articles of incorporation shall deliver to the secretary of state, for filing, articles of restatement setting forth the name of the corporation and the text of the restated articles of incorporation together with a certificate setting forth:

(a) whether the restatement contains an amendment to the articles requiring shareholder approval and, if it does not, that the board of directors adopted the restatement; or

(b) if the restatement contains an amendment to the articles requiring shareholders' approval, the information required by 35-1-230.

(5) Adopted restated articles of incorporation supersede the original articles of incorporation and all amendments to them.

(6) The secretary of state may certify restated articles of incorporation as the articles of incorporation currently in effect without including the certificate information required by subsection (4).

History: **En. Sec. 118, Ch. 368, L. 1991.**

Cross-References

Articles of incorporation, 35-1-216.

Filing fees, 35-1-1206.

35-1-232. Amendment pursuant to reorganization. (1) A corporation's articles of incorporation may be amended without action by the board of directors or shareholders if necessary to carry out a plan of reorganization ordered or decreed by a court of competent jurisdiction under federal statute if the articles of incorporation, after amendment, contain only provisions required or permitted by 35-1-216.

(2) The individual or individuals designated by the court shall deliver to the secretary of state, for filing, articles of amendment setting forth:

(a) the name of the corporation;

(b) the text of each amendment approved by the court;

(c) the date of the court's order or decree approving the articles of amendment;

(d) the title of the reorganization proceeding in which the order or decree was entered; and

(e) a statement that the court had jurisdiction of the proceeding under federal statute.

(3) Shareholders of a corporation undergoing reorganization do not have dissenters' rights except to the extent provided in the reorganization plan.

(4) This section does not apply after entry of a final decree in the reorganization proceeding even though the court retains jurisdiction of the proceeding for limited purposes unrelated to consummation of the reorganization plan.

History: **En. Sec. 119, Ch. 368, L. 1991.**

35-1-233. Effect of amendment. An amendment to articles of incorporation does not affect a cause of action existing against or in favor of the corporation, a proceeding to which the corporation is party, or the existing rights of persons other than shareholders of the corporation. An amendment changing a corporation's name does not abate a proceeding brought by or against the corporation in its former name.

History: **En. Sec. 120, Ch. 368, L. 1991.**

35-1-234. Bylaw amendment by board of directors or shareholders. (1) A corporation's board of directors may amend or repeal the corporation's bylaws unless:

(a) the articles of incorporation or this chapter reserve this power exclusively to the shareholders in whole or part; or

(b) the shareholders in amending, adding, or repealing a particular bylaw provide expressly that the board of directors may not amend or repeal that bylaw.

(2) A corporation's shareholders may amend or repeal the corporation's bylaws even though the bylaws may also be amended or repealed by its board of directors.

History: En. Sec. 121, Ch. 368, L. 1991.

35-1-235. Extension of duration of corporation. If a corporation is dissolved by the expiration of its period of duration as stated in its articles of incorporation, the corporation may amend its articles of incorporation within 5 years from the stated date of expiration to extend its existence.

History: En. Sec. 8, Ch. 249, L. 1993.

35-1-236. Bylaws. (1) The incorporators or board of directors of a corporation shall adopt initial bylaws for the corporation.

(2) The bylaws of a corporation may contain any provision for managing the business and regulating the affairs of the corporation that is consistent with law or the articles of incorporation.

History: En. Sec. 20, Ch. 368, L. 1991.

35-1-237. Emergency bylaws. (1) Unless the articles of incorporation provide otherwise, the board of directors of a corporation may adopt bylaws to be effective only in an emergency as defined in subsection (4). The emergency bylaws, which are subject to amendment or repeal by the shareholders, may make all provisions necessary for managing the corporation during the emergency, including:

(a) procedures for calling a meeting of the board of directors;

(b) quorum requirements for the meeting; and

(c) designation of additional or substitute directors.

(2) All provisions of the regular bylaws consistent with the emergency bylaws remain in effect during the emergency. The emergency bylaws are not in effect after the emergency ends.

(3) Corporate action taken in good faith in accordance with the emergency bylaws:

(a) binds the corporation; and

(b) may not be used to impose liability on a corporate director, officer, employee, or agent.

(4) For purposes of this section, an emergency exists if a quorum of the corporation's directors cannot readily be assembled because of some catastrophic event.

History: En. Sec. 21, Ch. 368, L. 1991.

35-1-238. Bylaw increasing quorum or voting requirement for shareholders. (1) If expressly authorized by the articles of incorporation, the shareholders may adopt or amend a bylaw that fixes a greater quorum or voting requirement for shareholders or voting groups of shareholders than is required by this chapter. The adoption or amendment of a bylaw that adds, changes, or deletes a greater quorum or voting requirement for shareholders must meet the same quorum requirement and be adopted by the same vote and voting groups required to take action under the quorum and voting requirement then in effect or proposed to be adopted, whichever is greater.

(2) A bylaw that fixes a greater quorum or voting requirement for shareholders under subsection (1) may not be adopted, amended, or repealed by the board of directors.

History: En. Sec. 122, Ch. 368, L. 1991.

35-1-239. Bylaw increasing quorum or voting requirement for directors. (1) A bylaw that fixes a greater quorum or voting requirement for the board of directors may be amended or repealed:

(a) if originally adopted by the shareholders, only by the shareholders; or

(b) if originally adopted by the board of directors, either by the shareholders or by the board of directors.

(2) A bylaw adopted or amended by the shareholders that fixes a greater quorum or voting requirement for the board of directors may provide that the bylaw may be amended or repealed only by a specified vote of either the shareholders or the board of directors.

(3) Action by the board of directors under subsection (1)(b) to adopt or amend a bylaw that changes the quorum or voting requirement for the board of directors must meet the same quorum requirement and be adopted by the same vote required to take action under the quorum and voting requirement then in effect or proposed to be adopted, whichever is greater.

History: En. Sec. 123, Ch. 368, L. 1991.

Part 3

Corporate Name, Registered Office and Agent, and Service of Process

Part Cross-References

Assumed business names, Title 30, ch. 13, part 2.

Exclusivity of corporate name, 30-13-202.

Business trust name, 35-5-201.

Acquisition of new name by dissolved corporation upon reinstatement, 35-6-203.

35-1-301 through 35-1-307. Repealed. Sec. 216, Ch. 368, L. 1991.

Compiler's Comments

Histories of Repealed Sections:

35-1-301. En. Sec. 7, Ch. 300, L. 1967; R.C.M. 1947, 15-2207; amd. Sec. 15, Ch. 475, L. 1981; amd. Sec. 2, Ch. 456, L. 1983.

35-1-302. En. Sec. 8, Ch. 300, L. 1967; R.C.M. 1947, 15-2208.

35-1-303. En. Sec. 9, Ch. 300, L. 1967; R.C.M. 1947, 15-2209; amd. Sec. 3, Ch. 456, L. 1983; amd. Sec. 2, Ch. 445, L. 1985.

35-1-304. En. Sec. 10, Ch. 300, L. 1967; R.C.M. 1947, 15-2210; amd. Sec. 3, Ch. 445, L. 1985.

35-1-305. En. Sec. 11, Ch. 300, L. 1967; R.C.M. 1947, 15-2211.

35-1-306. En. Sec. 12, Ch. 300, L. 1967; amd. Sec. 10, Ch. 62, L. 1977; R.C.M. 1947, 15-2212; amd. Sec. 17, Ch. 131, L. 1983; amd. Sec. 13, Ch. 174, L. 1983.

35-1-307. En. Sec. 13, Ch. 300, L. 1967; R.C.M. 1947, 15-2213.

35-1-308. Corporate name. (1) A corporate name:

(a) must contain the word "corporation", "incorporated", "company", or "limited"; the abbreviation "corp.", "inc.", "co.", or "ltd."; or words or abbreviations of similar meaning in another language; and

(b) may not contain language that states or implies that the corporation is organized for a purpose or purposes other than those permitted by 35-1-114 and its articles of incorporation.

(2) Except as authorized by subsections (3) and (4), a corporate name must be distinguishable in the records of the secretary of state from:

(a) the corporate name of another corporation incorporated or authorized to transact business in this state;

(b) a corporate name reserved or registered under 35-1-309 or 35-1-311;

(c) the fictitious name adopted by a foreign corporation authorized to transact business in this state because its real name is unavailable;

(d) the corporate name of a not-for-profit corporation incorporated or authorized to transact business in this state;

(e) the corporate name of a domestic corporation that has dissolved, but only distinguishable for a period of 120 days after the effective date of its dissolution; and

(f) any assumed business name, limited partnership name, limited liability company name, trademark, or service mark registered or reserved with the secretary of state.

(3) A corporation may apply to the secretary of state for authorization to use a name that is not distinguishable in the secretary of state's records from one or more of the names described in subsection (2). The secretary of state shall authorize use of the name applied for if:

(a) the other corporation consents to the use in writing and submits an undertaking in a form satisfactory to the secretary of state to change its name to a name that is distinguishable in the records of the secretary of state from the name of the applying corporation; or

(b) the applicant delivers to the secretary of state a certified copy of the final judgment of a court of competent jurisdiction establishing the applicant's right to use the name applied for in the state.

(4) A corporation, limited liability company, or limited partnership may use the name, including the fictitious name, of another domestic or foreign corporation, limited liability company, or limited partnership that is used in this state if the other corporation, limited liability company, or limited partnership is incorporated or authorized to transact business in this state and the proposed user corporation, limited liability company, or limited partnership:

(a) has merged with the other corporation, limited liability company, or limited partnership;

(b) has been formed by reorganization of the other corporation, limited liability company, or limited partnership;

(c) has acquired all or substantially all of the assets, including the corporate name, of the other corporation, limited liability company, or limited partnership; or

(d) has obtained written permission from the other corporation, limited liability company, or limited partnership for use of the name and has filed a copy of the grant of permission with the secretary of state.

(5) This chapter does not control the use of fictitious names.

History: En. Sec. 25, Ch. 368, L. 1991; amd. Sec. 83, Ch. 120, L. 1993; amd. Sec. 6, Ch. 229, L. 1999.

Compiler's Comments

1999 Amendment: Chapter 229 in four places in (4) and once in (4)(a), (4)(b), and (4)(c) inserted "limited liability company, or limited partnership"; inserted (4)(d) authorizing use of name by certain other groups if proposed user has obtained written permission and has filed copy of grant of permission with secretary of state; and made minor changes in style. Amendment effective April 2, 1999.

Cross-References

Exclusivity of assumed business names, 30-13-202.

Trademarks and service marks, Title 30, ch. 13, part 3.

Name of foreign corporation, 35-1-1031.

Limited liability company name, 35-8-103.

Limited partnership name, 35-12-505.

35-1-309. Reserved name. (1) A person may reserve the exclusive use of a corporate name, including a fictitious name for a foreign corporation whose corporate name is not available, by delivering an application to the secretary of state for filing. The application must set forth the name and address of the applicant and the name proposed to be reserved. If the secretary of state finds that the corporate name applied for is available, the secretary of state shall reserve the name for the applicant's exclusive use for a nonrenewable 120-day period.

(2) The owner of a reserved corporate name may transfer the reservation to another person by delivering to the secretary of state a signed notice of the transfer that states the name and address of the transferee.

History: En. Sec. 26, Ch. 368, L. 1991.

Cross-References

Reservation of proposed assumed business name, 30-13-211.

35-1-310. Contest of registration of name. (1) A person doing business in this state may contest the subsequent registration of a name under this section with the office of the secretary of state by filing an acknowledged notice of contest with the secretary of state and sending a copy of the notice of contest to the person who subsequently registered the contested name. The notice to the secretary of state must be accompanied by a $100 deposit, which the secretary of state shall award to the prevailing party in the contest.

(2) Upon receipt of a notice of contest, the secretary of state shall ask each party to the contest to submit within 30 days an affidavit setting forth the facts, opinions, and arguments for or against the retention of the contested name in the records of the secretary of state. The secretary of state shall review the affidavits and shall make a decision or order a hearing to be held within 30 days. If a hearing is ordered, the parties shall meet with the secretary of state before the hearing and attempt to settle the contest. If a settlement is not reached, the secretary of state shall hold a hearing. At the hearing the secretary of state may consider evidence presented by the parties relating to the factual or legal issues raised by the contest. A record of the hearing is not required. The hearing is not a contested case hearing. Where consistent with this section, the informal procedures of the Montana Administrative Procedure Act apply.

(3) The secretary of state may order that the contested name be changed on the records of the secretary of state if it is likely that the use of the names will cause confusion, mistake, or deception among the public when applied to the goods or services provided by the businesses. In determining whether confusion, mistake, or deception is likely, the secretary of state shall consider:

(a) the strength or unique nature of the names;

(b) the similarity of sound, appearance, or meaning of the names;

(c) the intent of the parties;

(d) the type of businesses engaged in or to be engaged in by the parties;

(e) the geographic market areas served by each party and the manner of distribution and marketing used in those areas;

(f) the nature and quality of goods or services provided by the parties;

(g) the level of sophistication of potential purchasers of goods or services offered by the parties;

(h) whether the party contesting the subsequent registration of a name failed to make a timely objection or acquiesced to the use of the name so that it would be inequitable to prohibit its registration; and

(i) whether the names in question are in fair use, have been abandoned, or are parodies of other names.

(4) The secretary of state shall make a decision for one of the parties within 10 days of the hearing and may order that the contested name be changed in the records of the secretary of state and the relevant documents be amended by the secretary of state in a manner that results in a new name that is not the same as or deceptively similar to another name registered with the office of the secretary of state.

(5) A party may appeal the decision of the secretary of state to the district court within 20 days. The district court shall consider the factual and legal issues without reference to the decision of the secretary of state.

History: En. Sec. 181, Ch. 368, L. 1991.

Cross-References

Term and renewal of assumed business name registration, 30-13-206.

35-1-311. Registered name of foreign corporation. (1) A foreign corporation may register its corporate name, or its corporate name with any addition required by 35-1-1031, if the name is distinguishable in the records of the secretary of state from the corporate names that are not available under 35-1-308(2)(c).

(2) A foreign corporation registers its corporate name, or its corporate name with any addition required by 35-1-1031, by delivering to the secretary of state, for filing, an application:

(a) setting forth its corporate name, or its corporate name with any addition required by 35-1-1031, the state or country, the date of its incorporation, and a brief description of the nature of the business in which it is engaged; and

(b) accompanied by a certificate of existence, or a similar document, from the state or country of incorporation.

(3) The name is registered for the applicant's exclusive use on the effective date of the application.

(4) A foreign corporation whose registration is effective may renew it for successive years by delivering to the secretary of state, for filing, a renewal application that complies with the requirements of subsection (2). The renewal application must be delivered between October 1 and December 31 of the preceding year. The renewal application renews the registration for the following calendar year.

(5) A foreign corporation whose registration is effective may continue to qualify as a foreign corporation under that name or consent in writing to the use of that name by a corporation later authorized to transact business in this state. The registration terminates when the foreign corporation is incorporated as a domestic corporation or the foreign corporation qualifies or consents to the qualification of another foreign corporation under the registered name.

History: En. Sec. 27, Ch. 368, L. 1991.

35-1-312 reserved.

35-1-313. Registered office — registered agent. (1) Each corporation shall continuously maintain in this state:

(a) a registered office that may but need not be the same as any of its places of business; and

(b) a registered agent, who must be one of the following:

(i) an individual who resides in this state and whose business office is identical to the registered office;

(ii) a domestic corporation or not-for-profit domestic corporation whose business office is identical to the registered office; or

(iii) a foreign corporation or not-for-profit foreign corporation authorized to transact business in this state whose business office is identical to the registered office.

(2) Unless the registered agent signed the document making the appointment, the appointment of a registered agent or a successor registered agent on whom process may be served is not effective until the agent delivers a statement in writing to the secretary of state accepting the appointment.

History: En. Sec. 28, Ch. 368, L. 1991; amd. Sec. 7, Ch. 229, L. 1999.

Compiler's Comments

1999 Amendment: Chapter 229 inserted (2) regarding effectiveness of appointment of registered agent; and made minor changes in style. Amendment effective April 2, 1999.

Cross-References

Service of process on Secretary of State, Rule 4D, M.R.Civ.P. (see Title 25, ch. 20).

Agency, Title 28, ch. 10.

Initial registered agent to be named in articles of incorporation, 35-1-216.

Agent for foreign corporation, 35-1-1032.

35-1-314. Change of registered office or registered agent. (1) A corporation may change its registered office or registered agent by delivering to the secretary of state, for filing, a statement of change that sets forth:

(a) the name of the corporation;

(b) the street address of its current registered office and, if different, the mailing address;

(c) if the current registered office is to be changed, the street address of the new registered office and, if different, the mailing address;

(d) the name of its current registered agent;

(e) if the current registered agent is to be changed, the name of the new registered agent and the new agent's written consent, either on the statement or attached to it, to the appointment; and

(f) that after the change or changes are made, the street addresses of its registered office and the business office of its registered agent will be identical.

(2) If a registered agent changes the street address of its business office, that agent may change the street address of the registered office of any corporation for which it is the registered agent by notifying the corporation in writing of the change and signing, either manually or in facsimile, and delivering to the secretary of state, for filing, a statement that complies with the requirements of subsection (1) and recites that the corporation has been notified of the change.

History: En. Sec. 29, Ch. 368, L. 1991.

35-1-315. Resignation of registered agent. (1) A registered agent may resign as registered agent by signing and delivering to the secretary of state, for filing, the signed original and two copies of a statement of resignation. The statement may include a statement that the registered office is also discontinued.

(2) After filing the statement, the secretary of state shall mail one copy to the registered office, if not discontinued, and the other copy to the corporation at its principal office.

(3) The agency appointment is terminated, and the registered office discontinued if so provided, 31 days after the date on which the statement was filed.

History: En. Sec. 30, Ch. 368, L. 1991.

35-1-316. Service of process on corporation. (1) Service of process on a corporation must be effected upon the persons and in the manner provided by the Montana Rules of Civil Procedure.

(2) The following are to be considered trustees for the corporation and its shareholders, for the purpose of service or demand, on a corporation dissolved pursuant to Title 35, chapter 6, or this chapter:

(a) in the case of a voluntary dissolution, any one of those persons designated as trustees for service of process pursuant to a filing made with the secretary of state or, if no filing is made, any one of the directors or officers of the corporation listed in the annual report most recently filed with the secretary of state; or

(b) in the case of an involuntary dissolution or expiration of a corporation's term, any one of those persons designated as receiver or trustee by a court of competent jurisdiction or any one of the directors or officers of the corporation listed in the annual report most recently filed with the secretary of state.

History: En. Sec. 31, Ch. 368, L. 1991.

Cross-References

Tort venue — out-of-state corporation, 25-2-122.

Personal service on corporations, Rule 4D, M.R.Civ.P. (see Title 25, ch. 20).

Service of process on foreign corporations, 35-1-1034.

35-1-317. Demand on or notice to corporation. (1) This section applies when the law requires or permits a demand on or notice to a corporation. However, the law does not require that the demand or notice be served in accordance with the Montana Rules of Civil Procedure.

(2) A corporation's registered agent is the corporation's agent for demand or notice required or permitted by law.

(3) If a corporation has no registered agent or the agent cannot with reasonable diligence be served, the demand may be made or the corporation may be notified by certified mail, return receipt requested, addressed to the secretary of the corporation at its principal office. The demand or notice is perfected under this subsection at the earliest of:

(a) the date the corporation receives the mail;

(b) the date shown on the return receipt, if signed on behalf of the corporation; or

(c) 5 days after its deposit in the United States mail, if mailed postpaid and correctly addressed.

History: En. Sec. 32, Ch. 368, L. 1991.

Part 4
Directors and Officers

Part Cross-References

Directors and officers of nonprofit corporations, Title 35, ch. 2, part 4.

Montana Close Corporation Act, Title 35, ch. 9.

Shareholders, directors, and officers of cooperative associations, Title 35, ch. 15, part 3.

Members and directors of agricultural associations, Title 35, ch. 16, part 3.

Members, directors, and officers of cooperative agricultural marketing associations, Title 35, ch. 17, part 3.

Members, trustees, and officers of rural cooperative utilities, Title 35, ch. 18, part 3.

Trustees of cemetery associations, Title 35, ch. 20, part 2.

35-1-401 through 35-1-411. Repealed. Sec. 216, Ch. 368, L. 1991.

Compiler's Comments

Histories of Repealed Sections:

35-1-401. En. Sec. 33, Ch. 300, L. 1967; R.C.M. 1947, 15-2233; amd. Sec. 16, Ch. 475, L. 1981.

35-1-402. En. Sec. 34, Ch. 300, L. 1967; R.C.M. 1947, 15-2234; amd. Sec. 17, Ch. 475, L. 1981.

35-1-403. En. Sec. 35, Ch. 300, L. 1967; R.C.M. 1947, 15-2235.

35-1-404. En. Sec. 39, Ch. 300, L. 1967; R.C.M. 1947, 15-2239; amd. Sec. 18, Ch. 475, L. 1981.

35-1-405. En. Sec. 37, Ch. 300, L. 1967; R.C.M. 1947, 15-2237.

35-1-406. En. Sec. 134, Ch. 300, L. 1967; R.C.M. 1947, 15-22-134(part); amd. Sec. 19, Ch. 475, L. 1981.

35-1-407. En. Sec. 38, Ch. 300, L. 1967; R.C.M. 1947, 15-2238; amd. Sec. 20, Ch. 475, L. 1981.

35-1-408. En. Sec. 36, Ch. 300, L. 1967; amd. Sec. 1, Ch. 309, L. 1969; R.C.M. 1947, 15-2236; amd. Sec. 21, Ch. 475, L. 1981.

35-1-409. En. Sec. 42, Ch. 300, L. 1967; R.C.M. 1947, 15-2242; amd. Sec. 22, Ch. 475, L. 1981.

35-1-410. En. Sec. 44, Ch. 300, L. 1967; R.C.M. 1947, 15-2244.

35-1-411. En. Sec. 45, Ch. 300, L. 1967; R.C.M. 1947, 15-2245.

35-1-412. Renumbered 35-1-428. Sec. 221, Ch. 368, L. 1991.

35-1-413. Repealed. Sec. 216, Ch. 368, L. 1991.

History: En. Sec. 23, Ch. 475, L. 1981.

35-1-414. Repealed. Sec. 216, Ch. 368, L. 1991.

History: En. Sec. 4, Ch. 475, L. 1981.

35-1-415. Repealed. Sec. 216, Ch. 368, L. 1991.

History: En. Sec. 5, Ch. 475, L. 1981.

35-1-416. Requirement for and duties of board of directors. (1) Each corporation must have a board of directors.

(2) Subject to any limitation set forth in the articles of incorporation, all corporate powers must be exercised by or under the authority of the board of directors, and the business and affairs of the corporation must be managed under the direction of its board of directors.

History: En. Sec. 75, Ch. 368, L. 1991.

Cross-References

Criminal responsibility of corporations, 45-2-311.

Accountability for conduct of corporation, 45-2-312.

35-1-417. Qualifications of directors. The articles of incorporation or bylaws may prescribe qualifications for directors. A director need not be a resident of this state or a shareholder of the corporation unless required by the articles of incorporation or bylaws.

History: En. Sec. 76, Ch. 368, L. 1991.

35-1-418. General standards for directors. (1) A director shall discharge his duties as a director, including the director's duties as a member of a committee:

(a) in good faith;

(b) with the care an ordinarily prudent person in a similar position would exercise under similar circumstances; and

(c) in a manner the director reasonably believes to be in the best interests of the corporation.

(2) In discharging duties, a director is entitled to rely on information, opinions, reports, or statements, including financial statements and other financial data, if prepared or presented by:

(a) one or more officers or employees of the corporation whom the director reasonably believes to be reliable and competent in the matters presented;

(b) attorneys, public accountants, or other persons with regard to matters the director reasonably believes are within the person's professional or expert competence; or

(c) a committee of the board of directors of which the director is not a member if the director reasonably believes the committee merits confidence.

(3) A director is not acting in good faith if the director has knowledge concerning the matter in question that makes reliance otherwise permitted by subsection (2) unwarranted.

(4) A director is not liable for any action taken as a director or for any failure to take any action if he performed the duties of the director's office in compliance with this section.

History: En. Sec. 92, Ch. 368, L. 1991.

Cross-References

Prohibited contributions from corporations for candidates or political parties, 13-35-227.

Criminal responsibility of corporations, 45-2-311.

Accountability for conduct of corporation, 45-2-312.

35-1-419. Number and election of directors. (1) A board of directors consists of one or more individuals, with the number specified in or fixed in accordance with the articles of incorporation or bylaws.

(2) If a board of directors has power to fix or change the number of directors, the board may increase or decrease by 30% or less the number of directors last approved by the shareholders, but only the shareholders may increase or decrease by more than 30% the number of directors last approved by the shareholders.

(3) The articles of incorporation or bylaws may establish a variable range for the size of the board of directors by fixing a minimum and maximum number of directors. If a variable range is established, the number of directors may be fixed or changed from time to time, within the minimum and maximum limits, by the shareholders or the board of directors. After shares are issued, only the shareholders may change the range for the size of the board or change from a fixed to a variable-range size board or vice versa.

(4) Directors are elected at the first annual shareholders' meeting and at each annual meeting thereafter unless their terms are staggered under 35-1-422.

History: En. Sec. 77, Ch. 368, L. 1991.

Cross-References

Actions to oust irregularly elected directors, 27-28-401, 27-28-402.

35-1-420. Election of directors by certain classes of shareholders. If the articles of incorporation authorize dividing the shares into classes, the articles may also authorize the election of all or a specified number of directors by the holders of one or more authorized classes of shares. Each class or classes of shares entitled to elect one or more directors is a separate voting group for purposes of the election of directors.

History: En. Sec. 78, Ch. 368, L. 1991.

35-1-421. Terms of directors generally. (1) The terms of the initial directors of a corporation expire at the first shareholders' meeting at which directors are elected.

(2) The terms of all other directors expire at the next annual shareholders' meeting following their election unless their terms are staggered under 35-1-422.

(3) A decrease in the number of directors does not shorten an incumbent director's term.

(4) A director elected or appointed to fill a vacancy is elected or appointed for the unexpired term of his predecessor in office.

(5) Despite the expiration of a director's term, the director continues to serve until the director's successor is elected and qualifies or until there is a decrease in the number of directors.

History: En. Sec. 79, Ch. 368, L. 1991.

35-1-422. Staggered terms for directors. If there are nine or more directors, the articles of incorporation or bylaws may provide for staggering their terms by dividing the total number of directors into two or three groups, with each group containing as near as possible to one-half or one-third of the total. In that event, the terms of directors in the first group expire at the first annual shareholders' meeting after their election, the terms of the second group expire at the second annual shareholders' meeting after their election, and the terms of the third group, if any, expire at the third annual shareholders' meeting after their election. At each annual shareholders' meeting held thereafter, directors shall be chosen for a term of 2 years or 3 years, as the case may be, to succeed those whose terms expire.

History: En. Sec. 80, Ch. 368, L. 1991.

35-1-423. Resignation of directors. (1) A director may resign at any time by delivering written notice to the board of directors, its chairman, or to the corporation.

(2) A resignation is effective when the notice is delivered unless the notice specified a later effective date.

History: En. Sec. 81, Ch. 368, L. 1991.

35-1-424. Removal of directors. (1) The shareholders may remove one or more directors with or without cause unless the articles of incorporation provide that directors may be removed only for cause.

(2) If a director is elected by a voting group of shareholders, only the shareholders of that voting group may participate in the vote to remove the director.

(3) Any director or the entire board of directors may be removed only by a vote of the holders of two-thirds of the shares entitled to vote at an election of directors unless otherwise provided by the articles of incorporation or bylaws. If the shareholders have the right to cumulate their votes when electing directors and if less than the entire board is to be removed, a director may not be removed if the votes cast against the director's removal would be sufficient to elect him if cumulatively voted at an election of the entire board of directors or, if there are classes of directors, at an election of the class of directors of which the director is a part. If the corporation has fewer than 100 shareholders, the entire board of directors may be removed only by a vote of a majority of the shares then entitled to vote.

(4) A director may be removed by the shareholders only at a meeting called for the purpose of removing the director. The meeting notice must state that the purpose, or one of the purposes, of the meeting is removal of the director.

History: En. Sec. 82, Ch. 368, L. 1991.

Cross-References

Elimination of board of directors, 35-9-302.

35-1-425. Removal of directors by judicial proceeding. (1) The district court of the county where a corporation's principal office or, if the office is not located in this state, the county where its registered office is located may remove a director of the corporation from office in a proceeding begun either by the corporation or by its shareholders holding at least 10% of the outstanding shares of any class if the court finds that:

(a) the director engaged in fraudulent or dishonest conduct or in gross abuse of authority or discretion, with respect to the corporation; and

(b) removal is in the best interest of the corporation.

(2) The court that removes a director may bar the director from reelection for a period prescribed by the court.

(3) If shareholders begin a proceeding under subsection (1), they shall make the corporation a party defendant.

History: En. Sec. 83, Ch. 368, L. 1991.

35-1-426. Vacancy on board. (1) Unless the articles of incorporation provide otherwise, if a vacancy occurs on a board of directors, including a vacancy resulting from an increase in the number of directors:

(a) the shareholders may fill the vacancy;

(b) the board of directors may fill the vacancy; or

(c) if the members of the board of directors remaining in office constitute fewer than a quorum of the board, they may fill the vacancy by the affirmative vote of a majority of all the directors remaining in office.

(2) If the vacant office was held by a director elected by a voting group of shareholders, only the holders of shares of that voting group are entitled to vote to fill the vacancy if it is filled by the shareholders.

(3) A vacancy that will occur at a specific later date, by reason of a resignation effective at a later date under 35-1-423 or otherwise, may be filled before the vacancy occurs. However, the new director may not take office until the vacancy occurs.

History: En. Sec. 84, Ch. 368, L. 1991.

35-1-427. Compensation of directors. Unless the articles of incorporation or bylaws provide otherwise, the board of directors may fix the compensation of directors.

History: **En. Sec. 85, Ch. 368, L. 1991.**

35-1-428. Penalty for signing false document. (1) The execution of any document required to be filed with the secretary of state under this chapter constitutes an affirmation, under the penalties of false swearing, by each person executing the document that the facts stated therein are true.

(2) The secretary of state shall provide for the printing of a warning to this effect on each form prescribed by him under this chapter.

History: **En. Sec. 126, Ch. 300, L. 1967; R.C.M. 1947, 15-22-126; amd. Sec. 14, Ch. 174, L. 1983; Sec. 35-1-412, MCA 1989; redes. 35-1-428 by Sec. 221, Ch. 368, L. 1991.**

Cross-References

False swearing, 45-7-202.

35-1-429 and 35-1-430 reserved.

35-1-431. Meetings. (1) The board of directors may hold regular or special meetings in the state or out of the state.

(2) Unless the articles of incorporation or bylaws provide otherwise, the board of directors may permit any or all directors to participate in a regular or special meeting by, or conduct the meeting through the use of, any means of communication by which all directors participating may simultaneously hear each other during the meeting. A director participating in a meeting by this means is considered to be present in person at the meeting.

(3) If requested by a director, minutes of any regular or special meeting must be prepared and be distributed to each director.

History: **En. Sec. 86, Ch. 368, L. 1991.**

35-1-432. Action without meeting. (1) Unless the articles of incorporation or bylaws provide otherwise, action required or permitted by this chapter to be taken at a board of directors' meeting may be taken without a meeting if the action is taken by all members of the board. The action must be evidenced by one or more written consents describing the action taken, be signed by each director, and be included in the minutes or filed with the corporate records reflecting the action taken.

(2) Action taken under this section is effective when the last director signs the consent unless the consent specifies a different effective date.

(3) A consent signed under this section has the effect of a meeting vote and may be described as a vote in any document.

History: **En. Sec. 87, Ch. 368, L. 1991.**

35-1-433. Notice of meeting. (1) Unless the articles of incorporation or bylaws provide otherwise, regular meetings of the board of directors may be held without notice of the date, time, place, or purpose of the meeting.

(2) Unless the articles of incorporation or bylaws provide for a longer or shorter period, special meetings of the board of directors must be preceded by at least 2 days' notice of the date, time, and place of the meeting. The notice is not required to describe the purpose of the special meeting unless required by the articles of incorporation or bylaws.

History: **En. Sec. 88, Ch. 368, L. 1991.**

35-1-434. Waiver of notice. (1) A director may waive a notice required by this chapter, the articles of incorporation, or bylaws before or after the date and time stated in the notice. Except as provided by subsection (2), the waiver must be in writing, be signed by the director entitled to the notice, and be filed with the minutes or corporate records.

(2) A director's attendance at or participation in a meeting waives any required notice to the director of the meeting unless the director, at the beginning of the meeting or promptly upon the director's arrival, objects to holding the meeting or transacting business at the meeting and does not vote for or assent to action taken at the meeting.

History: En. Sec. 89, Ch. 368, L. 1991.

35-1-435. Quorum — voting. (1) Unless the articles of incorporation or bylaws require a greater number, a quorum of a board of directors consists of:

(a) a majority of the fixed number of directors if the corporation has a fixed board size; or

(b) a majority of the number of directors prescribed or, if no number is prescribed, the number in office immediately before the meeting begins, if the corporation has a variable-range size board.

(2) The articles of incorporation or bylaws may authorize a quorum of a board of directors to consist of no fewer than one-third of the fixed or prescribed number of directors.

(3) If a quorum is present when a vote is taken, the affirmative vote of a majority of directors present is the act of the board of directors unless the articles of incorporation or bylaws require the vote of a greater number of directors.

(4) A director who is present at a meeting of the board of directors or a committee of the board of directors when corporate action is taken is considered to have assented to the action taken unless:

(a) the director objects at the beginning of the meeting or promptly upon the director's arrival to holding the meeting or transacting business at the meeting and delivers written notice of the director's objection to the presiding officer before its adjournment or to the corporation immediately after adjournment of the meeting;

(b) the director's dissent or abstention from the action taken is entered in the minutes of the meeting; or

(c) the director delivers written notice of his dissent or abstention to the presiding officer of the meeting before its adjournment or to the corporation immediately after adjournment of the meeting.

(5) The right of dissent or abstention is not available to a director who votes in favor of the action taken.

History: En. Sec. 90, Ch. 368, L. 1991.

35-1-436 through 35-1-438 reserved.

35-1-439. Committees. (1) Unless the articles of incorporation or bylaws provide otherwise, a board of directors may create one or more committees and appoint members of the board of directors to serve on them. Each committee may have two or more members who serve at the pleasure of the board of directors.

(2) The creation of a committee and appointment of members to it must be approved by the greater of a majority of all the directors in office when the action is taken or the number of directors required by the articles of incorporation or bylaws to take action under 35-1-435.

(3) Sections 35-1-431 through 35-1-435, which govern meetings, action without meetings, notice and waiver of notice, and quorum and voting requirements of the board of directors, apply to committees and their members as well.

(4) To the extent specified by the board of directors or in the articles of incorporation or bylaws, each committee may exercise the authority of the board of directors under 35-1-416. However, a committee may not:

(a) authorize distributions;

(b) approve or propose to shareholders action that this chapter requires to be approved by shareholders;

(c) fill vacancies on the board of directors or on any of its committees;

(d) amend articles of incorporation;

(e) adopt, amend, or repeal bylaws;

(f) approve a plan of merger not requiring shareholder approval;

(g) authorize or approve reacquisition of shares, except according to a formula or method prescribed by the board of directors; or

(h) authorize or approve the issuance of or sale or contract for sale of shares or determine the designation and relative rights, preferences, and limitations of a class or series of shares. However, the board of directors may authorize a committee or a senior executive officer of the corporation to do so within limits specifically prescribed by the board of directors.

(5) The creation of, delegation of authority to, or action by a committee does not by itself constitute compliance by a director with the standards of conduct described in 35-1-418.

History: En. Sec. 91, Ch. 368, L. 1991.

35-1-440 reserved.

35-1-441. Required officers. (1) A corporation has the officers described in its bylaws or appointed by the board of directors in accordance with the bylaws.

(2) A duly appointed officer may appoint one or more officers or assistant officers if authorized by the bylaws or the board of directors.

(3) The bylaws or the board of directors shall delegate to one of the officers responsibility for preparing minutes of the directors' and shareholders' meetings and for authenticating records of the corporation.

(4) The same individual may simultaneously hold more than one office in a corporation.

History: En. Sec. 94, Ch. 368, L. 1991.

35-1-442. Duties of officers. Each officer has the authority and shall perform the duties set forth in the bylaws or, to the extent consistent with the bylaws, the duties prescribed by the board of directors or by direction of an officer authorized by the board of directors to prescribe the duties of other officers.

History: En. Sec. 95, Ch. 368, L. 1991.

35-1-443. Standards of conduct for officers. (1) An officer with discretionary authority shall discharge his duties under that authority:

(a) in good faith;

(b) with the care an ordinarily prudent person in a similar position would exercise under similar circumstances; and

(c) in a manner the officer reasonably believes to be in the best interests of the corporation.

(2) In discharging his duties, an officer is entitled to rely on information, opinions, reports, or statements, including financial statements and other financial data, if prepared or presented by:

(a) one or more officers or employees of the corporation whom the officer reasonably believes to be reliable and competent in the matters presented; or

(b) attorneys, public accountants, or other persons as to matters the officer reasonably believes are within the person's professional or expert competence.

(3) An officer is not acting in good faith if the officer has knowledge concerning the matter in question that makes reliance otherwise permitted by subsection (2) unwarranted.

(4) An officer is not liable for any action taken as an officer or for any failure to take any action if the officer performed the duties of his office in compliance with this section.

History: En. Sec. 96, Ch. 368, L. 1991.

35-1-444. Resignation and removal of officers. (1) An officer may resign at any time by delivering notice to the corporation. A resignation is effective when the notice is delivered unless the notice specifies a later effective date. If a resignation is made effective at a later date and the corporation accepts the future effective date, its board of directors may fill the pending vacancy before the effective date if the board of directors provides that the successor does not take office until the effective date.

(2) The board of directors may remove any officer with or without cause, and if authorized by the bylaws or by the board of directors, an officer may remove an officer or assistant officer appointed by that officer under 35-1-441 with or without cause.

History: En. Sec. 97, Ch. 368, L. 1991.

35-1-445. Contract rights of officers. (1) The appointment of an officer does not itself create contract rights.

(2) An officer's removal does not affect the officer's contract rights, if any, with the corporation. An officer's resignation does not affect the corporation's contract rights, if any, with the officer.

History: En. Sec. 98, Ch. 368, L. 1991.

35-1-446 through 35-1-450 reserved.

35-1-451. Definitions. As used in 35-1-451 through 35-1-459, the following definitions apply:

(1) "Corporation" includes any domestic or foreign predecessor entity of a corporation in a merger or other transaction in which the predecessor's existence ceased upon consummation of the transaction.

(2) (a) "Director" means an individual who is or was a director of a corporation or an individual who, while a director of a corporation, is or was serving at the corporation's request as a director, officer, partner, trustee,

employee, or agent of another foreign or domestic corporation, partnership, joint venture, trust, employee benefit plan, or other enterprise. A director is considered to be serving an employee benefit plan at the corporation's request if the director's duties to the corporation include duties or services by him to the plan or to participants in or beneficiaries of the plan.

(b) Director includes, unless the context requires otherwise, the estate or personal representative of a director.

(3) "Expenses" include attorney fees.

(4) "Liability" means the obligation to pay a judgment, settlement, penalty, or fine, including an excise tax assessed with respect to an employee benefit plan, or to pay reasonable expenses incurred with respect to a proceeding.

(5) (a) "Official capacity" means:

(i) when used with respect to a director, the office of director in a corporation; or

(ii) when used with respect to an individual other than a director, as contemplated in 35-1-457, the office in a corporation held by the officer or the employment or agency relationship undertaken by the employee or agent on behalf of the corporation.

(b) Official capacity does not include service for any other foreign or domestic corporation or any partnership, joint venture, trust, employee benefit plan, or other enterprise.

(6) "Party" includes an individual who was, is, or is threatened to be made a named defendant or respondent in a proceeding.

(7) "Proceeding" means any threatened, pending, or completed action, suit, or proceeding, whether civil, criminal, administrative, or investigative and whether formal or informal.

History: En. Sec. 99, Ch. 368, L. 1991.

35-1-452. Authority to indemnify. (1) Except as provided in subsection (4), an individual made a party to a proceeding because he is or was a director may be indemnified against liability incurred in the proceeding if:

(a) he conducted himself in good faith;

(b) he reasonably believed:

(i) in the case of conduct in his official capacity with the corporation, that his conduct was in the corporation's best interests; and

(ii) in all other cases, that his conduct was at least not opposed to the corporation's best interests; and

(c) in the case of any criminal proceeding, he had no reasonable cause to believe his conduct was unlawful.

(2) A director's conduct with respect to an employee benefit plan for a purpose the director reasonably believed to be in the interests of the participants in and beneficiaries of the plan is conduct that satisfies the requirement of subsection (1)(b)(ii).

(3) The termination of a proceeding by judgment, order, settlement, conviction, or upon a plea of nolo contendere or its equivalent is not, of itself, a determination that the director did not meet the standard of conduct described in this section.

(4) A corporation may not indemnify a director under this section:

(a) in connection with a proceeding by or in the right of the corporation in which the director was adjudged liable to the corporation; or

(b) in connection with any other proceeding charging improper personal benefit to the director, whether or not involving action in the director's official capacity, in which the director was adjudged liable on the basis that personal benefit was improperly received by the director.

(5) Indemnification permitted under this section in connection with a proceeding by or in the right of the corporation is limited to reasonable expenses incurred in connection with the proceeding.

History: En. Sec. 100, Ch. 368, L. 1991.

Cross-References

Indemnity, Title 28, ch. 11, part 3.

35-1-453. Mandatory indemnification. Unless limited by its articles of incorporation, a corporation shall indemnify a director who was wholly successful, on the merits or otherwise, in the defense of any proceeding to which the director was a party because he is or was a director of the corporation, against reasonable expenses incurred by the director in connection with the proceeding.

History: En. Sec. 101, Ch. 368, L. 1991.

35-1-454. Advance for expenses. (1) A corporation may pay for or reimburse the reasonable expenses incurred by a director who is a party to a proceeding in advance of final disposition of the proceeding if:

(a) the director furnishes the corporation a written affirmation of the director's good faith belief that the director has met the standard of conduct described in 35-1-452;

(b) the director furnishes the corporation a written undertaking, executed personally or on the director's behalf, to repay the advance if it is ultimately determined that the director did not meet the standard of conduct described in 35-1-452; and

(c) a determination is made that the facts then known to those making the determination would not preclude indemnification under 35-1-451 through 35-1-459.

(2) The undertaking required by subsection (1)(b) must be an unlimited general obligation of the director but need not be secured and may be accepted without reference to financial ability to make repayment.

(3) Determinations and authorizations of payments under this section must be made in the manner specified in 35-1-456.

History: En. Sec. 102, Ch. 368, L. 1991.

35-1-455. Court-ordered indemnification. Unless a corporation's articles of incorporation provide otherwise, a director of the corporation who is a party to a proceeding may apply for indemnification to the court conducting the proceeding or to another court of competent jurisdiction. On receipt of an application, the court, after giving any notice the court considers necessary, may order indemnification if it determines that the director:

(1) is entitled to mandatory indemnification under 35-1-453, in which case the court shall also order the corporation to pay the director's reasonable expenses incurred in obtaining court-ordered indemnification; or

(2) is fairly and reasonably entitled to indemnification in view of all the relevant circumstances, whether or not the director met the standard of conduct set forth in 35-1-452 or was adjudged liable as described in 35-1-452(4). If the director was adjudged liable as described in 35-1-452(4), the director's indemnification is limited to reasonable expenses incurred.

History: En. Sec. 103, Ch. 368, L. 1991.

35-1-456. Determination and authorization of indemnification. (1) A corporation may not indemnify a director under 35-1-452 unless authorized in the specific case after a determination has been made that indemnification of the director is permissible in the circumstances because the director has met the standard of conduct set forth in 35-1-452.

(2) The determination must be made:

(a) by the board of directors by majority vote of a quorum consisting of directors not at the time parties to the proceeding;

(b) if a quorum cannot be obtained under subsection (2)(a), by majority vote of a committee designated by the board of directors, in which designated directors who are parties may participate, consisting solely of two or more directors not at the time parties to the proceeding;

(c) by special legal counsel:

(i) selected by the board of directors or its committee in the manner prescribed in subsection (2)(a) or (2)(b); or

(ii) if a quorum of the board of directors cannot be obtained under subsection (2)(a) and a committee cannot be designated under subsection (2)(b), selected by majority vote of the full board of directors in which selected directors who are parties may participate; or

(d) by the shareholders, but shares owned by or voted under the control of directors who are at the time parties to the proceeding may not be voted on the determination.

(3) Authorization of indemnification and evaluation as to reasonableness of expenses must be made in the same manner as the determination that indemnification is permissible, except that if the determination is made by special legal counsel, authorization of indemnification and evaluation as to reasonableness of expenses must be made by those entitled under subsection (2)(c) to select counsel.

History: En. Sec. 104, Ch. 368, L. 1991.

35-1-457. Indemnification of officers, employees, and agents. Unless a corporation's articles of incorporation provide otherwise:

(1) an officer of the corporation who is not a director is entitled to mandatory indemnification under 35-1-453 and is entitled to apply for court-ordered indemnification under 35-1-455 to the same extent as a director;

(2) the corporation may indemnify and advance expenses under 35-1-451 through 35-1-459 to an officer, employee, or agent of the corporation who is not a director to the same extent as to a director; and

(3) a corporation may also indemnify and advance expenses to an officer, employee, or agent who is not a director to the extent, consistent with public policy, that may be provided by its articles of incorporation, bylaws, general or specific action of its board of directors, or contract.

History: En. Sec. 105, Ch. 368, L. 1991.

35-1-458. Insurance. A corporation may purchase and maintain insurance on behalf of an individual who is or was a director, officer, employee, or agent of the corporation or who, while a director, officer, employee, or agent of the corporation, is or was serving at the request of the corporation as a director, officer, partner, trustee, employee, or agent of another foreign or domestic corporation, partnership, joint venture, trust, employee benefit plan, or other enterprise, against liability asserted against or incurred by him in that capacity or arising from his status as a director, officer, employee, or agent, whether or not the corporation would have power to indemnify him against the same liability under 35-1-452 or 35-1-453.

History: En. Sec. 106, Ch. 368, L. 1991.

35-1-459. Application. (1) A provision treating a corporation's indemnification of or advance for expenses to directors that is contained in its articles of incorporation, its bylaws, a resolution of its shareholders or board of directors, a contract, or other instrument is valid only if and to the extent the provision is consistent with 35-1-451 through 35-1-459. If articles of incorporation limit indemnification or advance for expenses, indemnification and advance for expenses are valid only to the extent consistent with the articles of incorporation.

(2) Sections 35-1-451 through 35-1-459 do not limit a corporation's power to pay or reimburse expenses incurred by a director in connection with the director's appearance as a witness in a proceeding at a time when the director has not been made a named defendant or respondent to the proceeding.

History: En. Sec. 107, Ch. 368, L. 1991.

35-1-460 reserved.

35-1-461. Definitions. As used in 35-1-461 through 35-1-464, the following definitions apply:

(1) "Conflicting interest" with respect to a corporation means the interest a director of the corporation has respecting a transaction effected or proposed to be effected by the corporation or by a subsidiary of the corporation or any other entity in which the corporation has a controlling interest if:

(a) regardless of whether the transaction is brought before the board of directors of the corporation for action, the director knows at the time of commitment that he or a related person is a party to the transaction or has a beneficial financial interest in or is so closely linked to the transaction and the transaction is of such financial significance to the director or a related person that the interest would reasonably be expected to exert an influence on the director's judgment if the director were called upon to vote on the transaction; or

(b) the transaction is brought, or is of a character and significance to the corporation that it would in the normal course be brought, before the board of directors of the corporation for action and the director knows at the time of commitment that any of the following persons is either a party to the transaction or has a beneficial financial interest in or is so closely linked to the transaction and the transaction is of such financial significance to the person that the interest would reasonably be expected to exert an influence on the director's judgment if the director were called upon to vote on the transaction:

(i) an entity, other than the corporation, of which the director is a director, general partner, agent, or employee;

(ii) a person who controls one or more of the entities specified in subsection (1)(b)(i) or an entity that is controlled by, or is under common control with, one or more of the entities specified in subsection (1)(b)(i); or

(iii) an individual who is a general partner, principal, or employer of the director.

(2) "Director's conflicting interest transaction", with respect to a corporation, means a transaction effected or proposed to be effected by the corporation or by a subsidiary of the corporation or any other entity in which the corporation has a controlling interest in which transaction a director of the corporation has a conflicting interest.

(3) "Related person" means:

(a) the spouse or a parent or sibling of a spouse of the director;

(b) a child, grandchild, sibling, parent or spouse of any child, grandchild, sibling, or parent of the director;

(c) an individual having the same residence as the director;

(d) a trust or estate of which an individual specified in this subsection (3) is a substantial beneficiary; or

(e) a trust, estate, incompetent person, conservatee, or minor for whom the director is a fiduciary.

(4) "Required disclosure" means disclosure by a director, who has a conflicting interest, of:

(a) the existence and nature of his conflicting interest; and

(b) all facts known to the director respecting the subject matter of the transaction that an ordinarily prudent person would reasonably believe to be material to a judgment about whether or not to proceed with the transaction.

(5) "Time of commitment" respecting a transaction means the time when the transaction is consummated or, if made pursuant to contract, the time when the corporation or its subsidiary or the entity in which it has a controlling interest becomes contractually obligated so that its unilateral withdrawal from the transaction would entail significant loss, liability, or other damage.

History: En. Sec. 108, Ch. 368, L. 1991.

35-1-462. Judicial action. (1) A transaction effected or proposed to be effected by a corporation or by a subsidiary of the corporation or any other entity in which the corporation has a controlling interest that is not a director's conflicting interest transaction may not be enjoined, set aside, or give rise to an award of damages or other sanctions in a proceeding by a shareholder or by or in the right of the corporation because a director of the corporation or any person with whom the director has a personal, economic, or other association has an interest in the transaction.

(2) A director's conflicting interest transaction may not be enjoined, set aside, or give rise to an award of damages or other sanctions in a proceeding by a shareholder or by or in the right of the corporation because the director or any person with whom the director has a personal, economic, or other association has an interest in the transaction if:

(a) directors' action respecting the transaction was at any time taken in compliance with 35-1-463;

(b) shareholders' action respecting the transaction was at any time taken in compliance with 35-1-464; or

(c) the transaction, judged according to the circumstances at the time of commitment, is established to have been fair to the corporation.

History: En. Sec. 109, Ch. 368, L. 1991.

35-1-463. Directors' action. (1) Directors' action respecting a transaction is effective for purposes of 35-1-462(2)(a) if the transaction received the affirmative vote of a majority, but no fewer than two, of those qualified directors on the board of directors or on an empowered committee of the board who voted on the transaction after either required disclosure to them, to the extent the information was not known by them, or compliance with subsection (2). Action by a committee is effective only if all its members are qualified directors and its members are either all the qualified directors on the board or are appointed by the affirmative vote of a majority of the qualified directors on the board.

(2) If a director has a conflicting interest respecting a transaction but neither the director nor a related person of the director specified in 35-1-461(3) is a party to the transaction and if the director has a duty under law or professional canon or a duty of confidentiality to another person respecting information relating to the transaction such that the director may not make the disclosure described in 35-1-461(4)(b), disclosure is sufficient for purposes of subsection (1) if the director:

(a) discloses to the directors voting on the transaction the existence and nature of the conflicting interest and informs them of the character and limitations imposed by that duty before their vote on the transaction; and

(b) plays no part, directly or indirectly, in their deliberations or vote.

(3) A majority, but no fewer than two, of all the qualified directors on the board of directors or on the committee constitutes a quorum for purposes of action that complies with this section. Directors' action that otherwise complies with this section is not affected by the presence or vote of a director who is not a qualified director.

(4) For purposes of this section, "qualified director" means, with respect to a director's conflicting interest transaction, any director who does not have either a conflicting interest respecting the transaction or a familial, financial, professional, or employment relationship with a second director who does have a conflicting interest respecting the transaction, which relationship would, in the circumstances, reasonably be expected to exert an influence on the first director's judgment when voting on the transaction.

History: En. Sec. 110, Ch. 368, L. 1991.

35-1-464. Shareholders' action. (1) Shareholders' action respecting a transaction is effective for purposes of 35-1-462(2)(b) if a majority of the votes entitled to be cast by the holders of all qualified shares were cast in favor of the transaction after:

(a) notice to shareholders describing the director's conflicting interest transaction;

(b) provision of the information referred to in subsection (3); and

(c) required disclosure to the shareholders who voted on the transaction, to the extent the information was not known by them.

(2) A majority of the votes entitled to be cast by the holders of all qualified shares constitutes a quorum for purposes of action that complies with this section. Subject to the provisions of subsections (3) and (4), shareholders' action that otherwise complies with this section is not affected by the presence of shareholders, or the voting, of shares that are not qualified shares.

(3) For purposes of compliance with subsection (1), a director who has a conflicting interest respecting the transaction shall, before the shareholders' vote, inform the secretary or other office or agent of the corporation authorized to tabulate votes of the number of all shares and the identity of persons holding or controlling the vote of all shares that the director knows are beneficially owned by or the voting of which is controlled by the director or by a related person of the director, or both.

(4) If a shareholders' vote does not comply with subsection (1) solely because of a failure of a director to comply with subsection (3) and if the director establishes that his failure did not determine and was not intended by him to influence the outcome of the vote, the court may, with or without further proceedings respecting 35-1-462(2)(c), take action respecting the transaction and the director and give effect, if any, to the shareholders' vote as it considers appropriate in the circumstances.

(5) For purposes of this section, "qualified shares" means any shares entitled to be voted with respect to the director's conflicting interest transaction except shares that, to the knowledge, before the vote, of the secretary or other officer or agent of the corporation authorized to tabulate votes, are beneficially owned by or the voting of which is controlled by a director who has a conflicting interest respecting the transaction or by a related person of the director, or both.

History: En. Sec. 111, Ch. 368, L. 1991.

Part 5
Shareholders

35-1-501 through 35-1-515. Repealed. Sec. 216, Ch. 368, L. 1991.

Compiler's Comments

Histories of Repealed Sections:

35-1-501. En. Sec. 26, Ch. 300, L. 1967; amd. Sec. 1, Ch. 308, L. 1969; R.C.M. 1947, 15-2226; amd. Sec. 24, Ch. 475, L. 1981.

35-1-502. En. Sec. 27, Ch. 300, L. 1967; R.C.M. 1947, 15-2227.

35-1-503. En. Sec. 28, Ch. 300, L. 1967; R.C.M. 1947, 15-2228.

35-1-504. En. Sec. 29, Ch. 300, L. 1967; R.C.M. 1947, 15-2229.

35-1-505. (1) thru (3)En. Sec. 30, Ch. 300, L. 1967; Sec. 15-2230, R.C.M. 1947; (4)En. Sec. 136, Ch. 300, L. 1967; Sec. 15-22-136, R.C.M. 1947; R.C.M. 1947, 15-2230, 15-22-136(part).

35-1-506. En. Sec. 31, Ch. 300, L. 1967; R.C.M. 1947, 15-2231; amd. Sec. 25, Ch. 475, L. 1981.

35-1-507. En. Sec. 132, Ch. 300, L. 1967; R.C.M. 1947, 15-22-132.

35-1-508. En. Sec. 32, Ch. 300, L. 1967; R.C.M. 1947, 15-2232; amd. Sec. 26, Ch. 475, L. 1981.

35-1-509. En. Sec. 134, Ch. 300, L. 1967; R.C.M. 1947, 15-22-134(part); amd. Sec. 27, Ch. 475, L. 1981.

35-1-510. En. Sec. 23, Ch. 300, L. 1967; R.C.M. 1947, 15-2223.

35-1-511. En. Sec. 24, Ch. 300, L. 1967; R.C.M. 1947, 15-2224; amd. Sec. 28, Ch. 475, L. 1981.

35-1-512. En. Sec. 136, Ch. 300, L. 1967; R.C.M. 1947, 15-22-136(part).

35-1-513. En. Sec. 46, Ch. 300, L. 1967; R.C.M. 1947, 15-2246.

35-1-514. En. Sec. 43, Ch. 300, L. 1967; R.C.M. 1947, 15-2243.

35-1-515. En. Sec. 29, Ch. 475, L. 1981.

35-1-516. Annual meeting. (1) A corporation shall hold an annual meeting of shareholders at a time stated in or fixed in accordance with the bylaws.

(2) Annual shareholders' meetings may be held in the state or out of the state, at the place stated in or fixed in accordance with the bylaws. If a place is not stated in or fixed in accordance with the bylaws, annual meetings must be held at the corporation's principal office.

(3) The failure to hold an annual meeting at the time stated in or fixed in accordance with a corporation's bylaws does not affect the validity of any corporate action.

(4) If the corporation has 50 or fewer shareholders and if permitted by the bylaws, shareholders may participate in an annual meeting of the shareholders through a conference telephone or similar communication equipment by means of which all persons participating in the meeting can hear each other at the same time. Participation in this manner constitutes presence in person at a meeting.

History: En. Sec. 49, Ch. 368, L. 1991.

35-1-517. Special meeting. (1) A corporation shall hold a special meeting of shareholders:

(a) on the call of its board of directors or the person authorized to do so by the articles of incorporation or bylaws; or

(b) if the holders of at least 10% of all the votes entitled to be cast on any issue proposed to be considered at the proposed special meeting sign, date, and deliver to the corporation's secretary one or more written demands for the meeting that describe the purpose for which it is to be held.

(2) If the record date is not fixed or the manner of fixing the record date is not specified under 35-1-518 or 35-1-522, the record date for determining shareholders entitled to demand a special meeting is the date the first shareholder signs the demand.

(3) Special shareholders' meetings may be held in the state or out of the state, at the place stated in or fixed in accordance with the bylaws. If a place is not stated or fixed in accordance with the bylaws, special meetings must be held at the corporation's principal office.

(4) Only business within the purpose described in the meeting notice required by 35-1-520 may be conducted at a special shareholders' meeting.

(5) If the corporation has 50 or fewer shareholders and if permitted by the bylaws, shareholders may participate in a special meeting of the shareholders by means of a conference telephone or similar communication equipment through which all persons participating in the meeting can hear each other at the same time. Participation in this manner constitutes presence in person at a meeting.

History: En. Sec. 50, Ch. 368, L. 1991.

35-1-518. Court-ordered meeting. (1) The district court of the county where a corporation's principal office or, if its principal office is not located in this state, in the county where its registered office is located may summarily order a meeting to be held:

(a) on application of any shareholder of the corporation entitled to participate in an annual meeting if an annual meeting was not held within the earlier of 6 months after the end of the corporation's fiscal year or 15 months after its last annual meeting; or

(b) on application of a shareholder who signed a demand for a special meeting valid under 35-1-517, if:

(i) notice of the special meeting was not given within 30 days after the date the demand was delivered to the corporation's secretary; or

(ii) the special meeting was not held in accordance with the notice.

(2) The court may fix the time and place of the meeting, determine the shares entitled to participate in the meeting, specify a record date for determining shareholders entitled to notice of and to vote at the meeting, prescribe the form and content of the meeting notice, fix the quorum required for specific matters to be considered at the meeting or direct that the votes represented at the meeting constitute a quorum for action on those matters, and enter other orders necessary to accomplish the purpose or purposes of the meeting.

History: En. Sec. 51, Ch. 368, L. 1991.

35-1-519. Action without meeting. (1) Action required or permitted by this chapter to be taken at a shareholders' meeting may be taken without a meeting if the action is taken by all the shareholders entitled to vote on the action. The action must be evidenced by one or more written consents describing the action taken, signed by all the shareholders entitled to vote on the action, and delivered to the corporation for inclusion in the minutes or filing with the corporate records.

(2) If not otherwise determined under 35-1-518 or 35-1-522, the record date for determining shareholders entitled to take action without a meeting is the date the first shareholder signs the consent under subsection (1).

(3) A consent signed under this section has the effect of a meeting vote and may be described as a vote in any document.

(4) If this chapter requires that notice of proposed action be given to nonvoting shareholders and the action is to be taken by unanimous consent of the voting shareholders, the corporation shall give its nonvoting shareholders written notice of the proposed action at least 10 days before the action is taken. The notice must contain or be accompanied by the same material that, under this chapter, would have been required to be sent to nonvoting shareholders in a notice of meeting at which the proposed action would have been submitted to the shareholders for action.

History: En. Sec. 52, Ch. 368, L. 1991.

35-1-520. Notice of meeting. (1) A corporation shall notify shareholders of the date, time, and place of each annual and special shareholders' meeting not less than 10 or more than 60 days before the meeting date. Unless this chapter or the articles of incorporation require otherwise, the corporation is required to give notice only to shareholders entitled to vote at the meeting.

(2) Unless this chapter or the articles of incorporation require otherwise, notice of an annual meeting need not include a description of the purpose for which the meeting is called.

(3) Notice of a special meeting must include a description of the purpose or purposes for which the meeting is called.

(4) If not otherwise fixed under 35-1-518 or 35-1-522, the record date for determining shareholders entitled to notice of and to vote at an annual or special shareholders' meeting is the day before the first notice is delivered to shareholders.

(5) Unless the bylaws require otherwise, if an annual or special shareholders' meeting is adjourned to a different date, time, or place, notice need not be given of the new date, time, or place if the new date, time, or place is announced at the meeting before adjournment. If a new record date for the adjourned meeting is or must be fixed under 35-1-522, notice of the adjourned meeting must be given under this section to persons who are shareholders as of the new record date.

History: En. Sec. 53, Ch. 368, L. 1991.

35-1-521. Waiver of notice. (1) A shareholder may waive any notice required by this chapter, the articles of incorporation, or bylaws before or after the date and time stated in the notice. The waiver must be in writing, be signed by the shareholder entitled to the notice, and be delivered to the corporation for inclusion in the minutes or filing with the corporate records.

(2) A shareholder's attendance at a meeting:

(a) waives objection to lack of notice or defective notice of the meeting unless the shareholder at the beginning of the meeting objects to holding the meeting or transacting business at the meeting; and

(b) waives objection to consideration of a particular matter at the meeting that is not within the purpose described in the meeting notice unless the shareholder objects to considering the matter when it is presented.

History: En. Sec. 54, Ch. 368, L. 1991.

35-1-522. Record date. (1) The bylaws may fix or provide the manner of fixing the record date for one or more voting groups in order to determine the shareholders entitled to notice of a shareholders' meeting, to demand a special meeting, to vote, or to take any other action. If the bylaws do not fix or provide for fixing a record date, the board of directors of the corporation may fix a future date as the record date.

(2) A record date fixed under this section may not be more than 70 days before the meeting or action requiring a determination of shareholders.

(3) A determination of shareholders entitled to notice of or to vote at a shareholders' meeting is effective for any adjournment of the meeting unless the board of directors fixes a new record date, which it must do if the meeting is adjourned to a date more than 120 days after the date fixed for the original meeting.

(4) If a court orders a meeting adjourned to a date more than 120 days after the date fixed for the original meeting, it may provide that the original record date continues in effect or it may fix a new record date.

History: En. Sec. 55, Ch. 368, L. 1991.

35-1-523. Shareholders' list for meeting. (1) After fixing a record date for a meeting, a corporation shall prepare an alphabetical list of the names of all its shareholders who are entitled to notice of a shareholders' meeting. The list must:

(a) be arranged by voting group, and within each voting group by class or series of shares; and

(b) show the address of and number of shares held by each shareholder.

(2) The shareholders' list must be available for inspection by any shareholder, beginning 2 business days after notice is given of the meeting for which the list was prepared and continuing through the meeting, at the corporation's principal office or at a place identified in the meeting notice in the city where the meeting will be held. A shareholder or a shareholder's agent or attorney is entitled on written demand to inspect and, subject to the requirements of 35-1-1107(3), to copy the list, during regular business hours and at that shareholder's expense, during the period it is available for inspection.

(3) The corporation shall make the shareholders' list available at the meeting, and any shareholder or the shareholder's agent or attorney is entitled to inspect the list at any time during the meeting or any adjournment.

(4) If the corporation refuses to allow a shareholder or the shareholder's agent or attorney to inspect the shareholders' list before or at the meeting or to copy the list as permitted by subsection (2), on application of the shareholder, the district court of the county where a corporation's principal office or, if the principal office is not located in this state, its registered office is located, may summarily order the inspection or copying at the corporation's expense and may provide recovery to a shareholder for costs, including reasonable attorney fees, in bringing the action.

(5) Refusal or failure to prepare or make available the shareholders' list does not affect the validity of action taken at the meeting.

History: En. Sec. 56, Ch. 368, L. 1991.

35-1-524. Voting entitlement of shares. (1) Except as provided in subsections (2) and (3) or unless the articles of incorporation provide otherwise, each outstanding share, regardless of class, is entitled to one vote on each matter voted on at a shareholders' meeting. Only shares are entitled to vote.

(2) Absent special circumstances, the shares of a corporation are not entitled to vote if they are owned, directly or indirectly, by a second corporation, domestic or foreign, and the first corporation owns, directly or indirectly, a majority of the shares entitled to vote for directors of the second corporation.

(3) Subsection (2) does not limit the power of a corporation to vote any shares, including its own shares, held by it in a fiduciary capacity.

(4) Redeemable shares are not entitled to vote after notice of redemption is mailed to the holders and a sum sufficient to redeem the shares has been deposited with a bank, trust company, or other financial institution under an irrevocable obligation to pay the shareholders the redemption price on surrender of the shares.

(5) Shares acquired by the corporation pursuant to 35-1-630 are not entitled to vote as long as they are owned by the corporation.

History: En. Sec. 57, Ch. 368, L. 1991.

Cross-References

Election of directors of railroad corporation, 69-14-501, 69-14-502.

Montana Uniform Transfers to Minors Act — powers of custodian, 72-26-701.

35-1-525. Proxies. (1) A shareholder may vote the shareholder's shares in person or by proxy.

(2) (a) A shareholder may appoint a proxy to vote or otherwise act for that shareholder by:

(i) signing an appointment form, either personally or by attorney-in-fact; or

(ii) transmitting or authorizing the transmission of an appointment by telegram, cablegram, telephone, fax, e-mail, internet, or other means of electronic transmission, provided that the transmission contains sufficient information to demonstrate that the transmission was authorized by the shareholder.

(b) The secretary or other officer or agent that receives the transmission shall determine whether or not the transmission was authorized by the shareholder based on the information contained in the transmission.

(c) The signature provisions of 35-1-527 pertaining to proxies do not apply to transmissions that are determined to be authorized under the provisions of this subsection (2).

(3) An appointment of a proxy is effective when received by the secretary or other officer or agent authorized to tabulate votes. An appointment is valid for 11 months unless a longer period is expressly provided in the appointment form or transmission.

(4) Except as provided in subsection (6), an appointment of a proxy is revocable by the shareholder unless the appointment form conspicuously states that it is irrevocable and the appointment is coupled with an interest. Appointments coupled with an interest include the appointment of:

(a) a pledgee;

(b) a person who purchased or agreed to purchase the shares;

(c) a creditor of the corporation who extended it credit under terms requiring the appointment;

(d) an employee of the corporation whose employment contract requires the appointment; or

(e) a party to a voting agreement created under 35-1-533.

(5) The death or incapacity of the shareholder appointing a proxy does not affect the right of the corporation to accept the proxy's authority unless notice of the death or incapacity is received by the secretary or other officer or agent authorized to tabulate votes before the proxy exercises the proxy's authority under the appointment.

(6) An appointment made irrevocable under subsection (4) is revoked when the interest with which it is coupled is extinguished.

(7) A transferee for value of shares subject to an irrevocable appointment may revoke the appointment if the transferee did not know of its existence when the transferee acquired the shares and the existence of the irrevocable appointment was not noted conspicuously on the certificate representing the shares or on the information statement for shares without certificates.

(8) Subject to 35-1-526 and to any express limitation on the proxy's authority appearing on the face of the appointment form, a corporation is entitled to accept the proxy's vote or other action as that of the shareholder making the appointment.

(9) A shareholder may not sell the shareholder's vote or issue a proxy to vote to any person for any sum of money or anything of value except as authorized in 35-1-532 and this section.

History: En. Sec. 58, Ch. 368, L. 1991; amd. Sec. 8, Ch. 229, L. 1999.

Compiler's Comments

1999 Amendment: Chapter 229 inserted (2)(a)(ii) authorizing electronic transmission of shareholder proxy appointment; inserted (2)(b) requiring officer receiving transmission to determine authenticity; inserted (2)(c) exempting signature provisions for corporation acceptance of votes under 35-1-527 from electronic transmission authorization; at end of (3) inserted "or transmission"; and made minor changes in style. Amendment effective April 2, 1999.

35-1-526. Shares held by nominees. (1) A corporation may establish a procedure by which the beneficial owner of shares that are registered in the name of a nominee is recognized by the corporation as the shareholder. The extent of this recognition may be determined in the procedure.

(2) The procedure may set forth:

(a) the type of nominee to which it applies;

(b) the rights or privileges that the corporation recognizes in a beneficial owner;

(c) the manner in which the procedure is selected by the nominee;

(d) the information that must be provided when the procedure is selected;

(e) the period for which selection of the procedure is effective; and

(f) other aspects of the rights and duties created.

History: En. Sec. 59, Ch. 368, L. 1991.

35-1-527. Corporation's acceptance of votes. (1) If the name signed on a vote, consent, waiver, or proxy appointment corresponds to the name of a shareholder, the corporation if acting in good faith is entitled to accept the vote, consent, waiver, or proxy appointment and give it effect as the act of the shareholder.

(2) If the name signed on a vote, consent, waiver, or proxy appointment does not correspond to the name of its shareholder, the corporation, if acting in good faith, is nevertheless entitled to accept the vote, consent, waiver, or proxy appointment and give it effect as the act of the shareholder if:

(a) the shareholder is an entity and the name signed purports to be that of an officer or agent of the entity;

(b) the name signed purports to be that of an administrator, executor, guardian, or conservator representing the shareholder and, if the corporation requests, evidence of fiduciary status acceptable to the corporation has been presented with respect to the vote, consent, waiver, or proxy appointment;

(c) the name signed purports to be that of a receiver or trustee in bankruptcy of the shareholder and, if the corporation requests, evidence of this status acceptable to the corporation has been presented with respect to the vote, consent, waiver, or proxy appointment;

(d) the name signed purports to be that of a pledgee, beneficial owner, or attorney-in-fact of the shareholder and, if the corporation requests, evidence acceptable to the corporation of the signatory's authority to sign for the shareholder has been presented with respect to the vote, consent, waiver, or proxy appointment; or

(e) two or more persons are the shareholder as cotenants or fiduciaries and the name signed purports to be the name of at least one of the co-owners and the person signing appears to be acting on behalf of all the co-owners.

(3) The corporation is entitled to reject a vote, consent, waiver, or proxy appointment if the secretary or other officer or agent authorized to tabulate

votes, acting in good faith, has reasonable basis for doubt about the validity of the signature on it or about the signatory's authority to sign for the shareholder.

(4) The corporation and its officer or agent who accept or reject a vote, consent, waiver, or proxy appointment in good faith and in accordance with the standards of this section are not liable in damages to the shareholder for the consequences of the acceptance or rejection.

(5) Corporate action based on the acceptance or rejection of a vote, consent, waiver, or proxy appointment under this section is valid unless a court of competent jurisdiction determines otherwise.

History: En. Sec. 60, Ch. 368, L. 1991.

35-1-528. Quorum and voting requirements for voting groups. (1) Shares entitled to vote as a separate voting group may take action on a matter at a meeting only if a quorum of those shares exists with respect to that matter. Unless the articles of incorporation or this chapter provide otherwise, a majority of the votes entitled to be cast on the matter by the voting group constitutes a quorum of that voting group for action on that matter.

(2) Once a share is represented for any purpose at a meeting, it is considered present for quorum purposes for the remainder of the meeting and for any adjournment of that meeting unless a new record date is or must be set for that adjourned meeting.

(3) If a quorum exists, action on a matter other than the election of directors by a voting group is approved if the votes cast within the voting group favoring the action exceed the votes cast opposing the action, unless the articles of incorporation or this chapter require a greater number of affirmative votes.

(4) An amendment of articles of incorporation adding, changing, or deleting a quorum or voting requirement for a voting group greater than specified in subsection (2) or (3) is governed by 35-1-530.

(5) The election of directors is governed by 35-1-531.

History: En. Sec. 61, Ch. 368, L. 1991.

35-1-529. Action by single and multiple voting groups. (1) If the articles of incorporation or this chapter provide for voting by a single voting group on a matter, action on that matter is taken when voted upon by that voting group as provided in 35-1-527.

(2) If the articles of incorporation or this chapter provide for voting by two or more voting groups on a matter, action on that matter is taken only when voted upon by each of those voting groups counted separately as provided in 35-1-528. Action may be taken by one voting group on a matter even though no action is taken by another voting group entitled to vote on the matter.

History: En. Sec. 62, Ch. 368, L. 1991.

35-1-530. Greater quorum or voting requirements. (1) The articles of incorporation may provide for a greater quorum or voting requirement for shareholders or for voting groups of shareholders than is provided for by this chapter.

(2) An amendment to the articles of incorporation that adds, changes, or deletes a greater quorum or voting requirement must meet the same quorum requirement and be adopted by the same vote and voting groups required to

take action under the quorum and voting requirements then in effect or proposed to be adopted, whichever is greater.

History: **En. Sec. 63, Ch. 368, L. 1991.**

35-1-531. Voting for directors — cumulative voting. (1) Unless otherwise provided in the articles of incorporation, directors are elected by a plurality of the votes cast by the shares entitled to vote in the election at a meeting at which a quorum is present.

(2) Except as limited by subsection (3), at each election for directors each shareholder entitled to vote at the election has the right:

(a) to vote, in person or by proxy, the number of shares owned by the shareholder for as many persons as there are directors to be elected and for whose election the shareholder has a right to vote; or

(b) to cumulate the shareholder's votes:

(i) by giving one candidate as many votes as the number of directors to be elected multiplied by the number of shareholders' shares; or

(ii) by distributing the votes on the same principle among any number of the candidates.

(3) The right of all shareholders to cumulate their shares provided by subsection (2) may be denied by a statement to that effect included in the articles of incorporation, but only if:

(a) the statement is included in the articles of incorporation at the time the initial articles of incorporation are filed; or

(b) the statement is included in an amendment to the articles of incorporation unless the number of votes sufficient to elect one director, if voted upon a cumulative basis, was voted against the amendment.

History: **En. Sec. 64, Ch. 368, L. 1991.**

35-1-532. Voting trusts. (1) One or more shareholders may create a voting trust, conferring on a trustee the right to vote or otherwise act for them, by signing an agreement setting out the provisions of the trust, which may include anything consistent with its purpose, and by transferring their shares to the trustee. When a voting trust agreement is signed, the trustee shall prepare a list of the names and addresses of all owners of beneficial interests in the trust, together with the number and class of shares each transferred to the trust, and deliver copies of the list and agreement to the corporation's principal office.

(2) A voting trust becomes effective on the date the first shares subject to the trust are registered in the trustee's name. A voting trust is valid for not more than 10 years after its effective date unless extended under subsection (3).

(3) All or some of the parties to a voting trust may extend it for additional terms of not more than 10 years each by signing an extension agreement and obtaining the voting trustee's written consent to the extension. An extension is valid for 10 years from the date the first shareholder signs the extension agreement. The voting trustee shall deliver copies of the extension agreement and the list of beneficial owners to the corporation's principal office. An extension agreement binds only those parties signing it.

(4) The counterpart of the voting trust agreement and the copy of the record deposited with the corporation is subject to the same right of

examination by a shareholder of a corporation, in person or by agent or attorney, as are the books and records of the corporation, and the counterpart and the copy of the record are subject to examination by any holder of record of voting trust certificates, either in person or by agent or attorney, at any reasonable time for any proper purpose.

History: **En. Sec. 65, Ch. 368, L. 1991.**

35-1-533. Voting agreements. (1) Two or more shareholders may provide for the manner in which they will vote their shares by signing an agreement for that purpose. A voting agreement created under this section is not subject to the provisions of 35-1-532.

(2) A voting agreement created under this section is specifically enforceable.

History: **En. Sec. 66, Ch. 368, L. 1991.**

35-1-534. Liability of shareholders. (1) A purchaser from a corporation of its own shares is not liable to the corporation or its creditors with respect to the shares except to pay the consideration for which the shares were authorized to be issued as provided in 35-1-623 or specified in the subscription agreement as provided in 35-1-622.

(2) Unless otherwise provided in the articles of incorporation, a shareholder of a corporation is not personally liable for the acts or debts of the corporation except that a shareholder may become personally liable by reason of that shareholder's own acts or conduct.

History: **En. Sec. 39, Ch. 368, L. 1991.**

Cross-References

Redemption by stockholder or corporation, 25-13-804.

Liability of directors in certain cases, 35-1-418.

35-1-535. Shareholders' preemptive rights. (1) The shareholders of a corporation do not have a preemptive right to acquire the corporation's unissued shares except to the extent provided in the articles of incorporation.

(2) A statement included in the articles of incorporation that "the corporation elects to have preemptive rights", or similar words, means that all of the following principles apply except to the extent the articles of incorporation expressly provide otherwise:

(a) The shareholders of the corporation have a preemptive right, granted on uniform terms and conditions prescribed by the board of directors to provide a fair and reasonable opportunity to exercise the right, to acquire proportional amounts of the corporation's unissued shares upon the decision of the board of directors to issue them and to acquire proportional amounts of the corporation's issued shares acquired by the corporation pursuant to 35-1-630 upon the decision of the board of directors to convey them.

(b) A shareholder may waive his preemptive right. A waiver evidenced by a writing is irrevocable even though it is not supported by consideration.

(c) Shareholders of a corporation have no preemptive right to acquire proportional amounts of shares with respect to:

(i) shares issued as compensation to directors, officers, agents, or employees of the corporation, its subsidiaries, or its affiliates;

(ii) shares issued to satisfy conversion or option rights created to provide compensation to directors, officers, agents, or employees of the corporation, its subsidiaries, or its affiliates;

(iii) shares authorized in articles of incorporation that are issued within 6 months from the effective date of incorporation; or

(iv) shares sold otherwise than for money.

(d) Holders of shares of any class without general voting rights but with preferential rights to distributions or assets have no preemptive rights with respect to shares of any class.

(e) Holders of shares of any class with general voting rights but without preferential rights to distributions or assets have no preemptive rights with respect to shares of any class with preferential rights to distributions or assets unless the shares with preferential rights are convertible into or carry a right to subscribe for or acquire shares without preferential rights.

(f) Shares subject to preemptive rights that are not acquired by shareholders may be issued to any person for a period of 1 year after being offered to shareholders at a consideration set by the board of directors that is not lower than the consideration set for the exercise of preemptive rights. An offer at a lower consideration or after the expiration of 1 year is subject to the shareholders' preemptive rights.

(g) Shares acquired by the corporation pursuant to 35-1-630 have no preemptive rights as long as they are owned by the corporation.

(3) For purposes of this section, "shares" includes a security convertible into or carrying a right to subscribe for or acquire shares.

History: En. Sec. 46, Ch. 368, L. 1991.

35-1-536 through 35-1-540 reserved.

35-1-541. Definitions. As used in 35-1-541 through 35-1-548, the following definitions apply:

(1) "Derivative proceeding" means a civil suit in the right of a domestic corporation or, to the extent provided in 35-1-548, in the right of a foreign corporation.

(2) "Shareholder" includes a beneficial owner whose shares are held in a voting trust or held by a nominee on the beneficial owner's behalf.

History: En. Sec. 67, Ch. 368, L. 1991.

35-1-542. Standing. A shareholder may not commence or maintain a derivative proceeding unless the shareholder:

(1) was a shareholder of the corporation at the time of the act or omission complained of or became a shareholder through transfer by operation of law from one who was a shareholder at that time; and

(2) fairly and adequately represents the interests of the corporation in enforcing the right of the corporation.

History: En. Sec. 68, Ch. 368, L. 1991.

35-1-543. Demand. A shareholder may not commence a derivative proceeding until:

(1) a written demand has been made upon the corporation to take suitable action; and

(2) 90 days have expired from the date the demand was made unless the shareholder has earlier been notified that the demand has been rejected by the corporation or unless irreparable injury to the corporation would result by waiting for the expiration of the 90-day period.

History: En. Sec. 69, Ch. 368, L. 1991.

35-1-544. Stay of proceedings. If the corporation begins an inquiry into the allegations made in the demand or complaint, the court may stay any derivative proceeding for the period the court considers appropriate.

History: En. Sec. 70, Ch. 368, L. 1991.

35-1-545. Dismissal. (1) A derivative proceeding must be dismissed by the court on motion by the corporation if one of the groups specified in subsection (2) or (6) has determined in good faith after conducting a reasonable inquiry upon which its conclusions are based that the maintenance of the derivative proceeding is not in the best interests of the corporation.

(2) Unless a panel is appointed pursuant to subsection (6), the determination in subsection (1) must be made by:

(a) a majority vote of independent directors present at a meeting of the board of directors if the independent directors constitute a quorum; or

(b) a majority vote of a committee consisting of two or more independent directors appointed by majority vote of independent directors present at a meeting of the board of directors, whether or not the independent directors constituted a quorum.

(3) None of the following may by itself cause a director to be considered not independent for purposes of this section:

(a) the nomination or election of the director by persons who are defendants in the derivative proceeding or against whom action is demanded;

(b) the naming of the director as a defendant in the derivative proceeding or as a person against whom action is demanded; or

(c) the approval by the director of the act being challenged in the derivative proceeding or demand if the act did not result in personal benefit to the director.

(4) If a derivative proceeding is begun after a determination has been made rejecting a demand by a shareholder, the complaint must allege with particularity facts establishing either that a majority of the board of directors did not consist of independent directors at the time the determination was made or that the requirements of subsection (1) have not been met.

(5) If a majority of the board of directors does not consist of independent directors at the time the determination is made, the corporation has the burden of proving that the requirements of subsection (1) have been met. If a majority of the board of directors consists of independent directors at the time the determination is made, the plaintiff has the burden of proving that the requirements of subsection (1) have not been met.

(6) Upon motion by the corporation, the court may appoint a panel of one or more independent persons to make a determination of whether the maintenance of the derivative proceeding is in the best interests of the corporation. If this is done, the plaintiff has the burden of proving that the requirements of subsection (1) have not been met.

History: En. Sec. 71, Ch. 368, L. 1991.

35-1-546. Discontinuance or settlement — notice. A derivative proceeding may not be discontinued or settled without the court's approval. If the court determines that a proposed discontinuance or settlement will substantially affect the interests of the corporation's shareholders or a class of shareholders, the court shall direct that notice be given to the shareholders affected.

History: En. Sec. 72, Ch. 368, L. 1991.

35-1-547. Payment of expenses. On termination of the derivative proceeding, the court may:

(1) order the corporation to pay the plaintiff's reasonable expenses, including attorney fees, incurred in the proceeding if it finds that the proceeding has resulted in a substantial benefit to the corporation;

(2) order the plaintiff to pay a defendant's reasonable expenses, including attorney fees, incurred in defending the proceeding if it finds that the proceeding was commenced or maintained without reasonable cause or for an improper purpose; or

(3) order a party to pay an opposing party's reasonable expenses, including attorney fees, incurred because of the filing of a pleading, motion, or other paper, if it finds that:

(a) the pleading, motion, or other paper was not well-grounded in fact, after reasonable inquiry; or

(b) the filing was not warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law and was interposed for an improper purpose, such as to harass, to cause unnecessary delay, or to cause a needless increase in the cost of litigation.

History: En. Sec. 73, Ch. 368, L. 1991.

35-1-548. Applicability to foreign corporations. In a derivative proceeding in the right of a foreign corporation, the matters covered by 35-1-541 through 35-1-548 are governed by the laws of the jurisdiction of incorporation of the foreign corporation except for 35-1-544, 35-1-546, and 35-1-547.

History: En. Sec. 74, Ch. 368, L. 1991.

35-1-549 reserved.

35-1-550. Number of shareholders. (1) For purposes of Title 35, chapter 9, the following, identified as a shareholder in a corporation's current record of shareholders, constitutes one shareholder:

(a) three or fewer co-owners;

(b) a corporation, partnership, trust, estate, or other entity; or

(c) the trustees, guardians, custodians, or other fiduciaries of a single trust, estate, or account.

(2) For purposes of Title 35, chapter 9, shareholdings registered in substantially similar names constitute one shareholder if it is reasonable to believe that the names represent the same person.

History: En. Sec. 180, Ch. 368, L. 1991.

Part 6
Shares

Part Cross-References

U.C.C. — investment securities, Title 30, ch. 8.

Securities Act of Montana, Title 30, ch. 10.

Shares of cooperative associations, Title 35, ch. 15, part 4.

Stockholder provisions of agricultural associations, Title 35, ch. 16, part 2.

Stock of cooperative agricultural marketing associations, 35-17-302.

Conversion of corporation shares into rural cooperative utility memberships, 35-18-206.

35-1-601 through 35-1-607. Repealed. Sec. 216, Ch. 368, L. 1991.

Compiler's Comments

Histories of Repealed Sections:

35-1-601. En. Sec. 14, Ch. 300, L. 1967; R.C.M. 1947, 15-2214; amd. Sec. 30, Ch. 475, L. 1981.

35-1-602. En. Sec. 15, Ch. 300, L. 1967; R.C.M. 1947, 15-2215; amd. Sec. 31, Ch. 475, L. 1981; amd. Sec. 18, Ch. 131, L. 1983; amd. Sec. 15, Ch. 174, L. 1983.

35-1-603. En. Sec. 16, Ch. 300, L. 1967; R.C.M. 1947, 15-2216.

35-1-604. En. Sec. 136, Ch. 300, L. 1967; R.C.M. 1947, 15-22-136(part), (1) thru (12), (14) thru (18).

35-1-605. En. Sec. 17, Ch. 300, L. 1967; R.C.M. 1947, 15-2217; amd. Sec. 32, Ch. 475, L. 1981.

35-1-606. En. Sec. 18, Ch. 300, L. 1967; R.C.M. 1947, 15-2218(part); amd. Sec. 33, Ch. 475, L. 1981.

35-1-607. En. Sec. 18, Ch. 300, L. 1967; R.C.M. 1947, 15-2218(part); amd. Sec. 34, Ch. 475, L. 1981.

35-1-608. Repealed. Sec. 62, Ch. 475, L. 1981.

History: En. Sec. 19, Ch. 300, L. 1967; R.C.M. 1947, 15-2219.

35-1-609 through 35-1-612. Repealed. Sec. 216, Ch. 368, L. 1991.

Compiler's Comments

Histories of Repealed Sections:

35-1-609. En. Sec. 20, Ch. 300, L. 1967; R.C.M. 1947, 15-2220.

35-1-610. En. Sec. 21, Ch. 300, L. 1967; R.C.M. 1947, 15-2221; amd. Sec. 35, Ch. 475, L. 1981.

35-1-611. En. Sec. 22, Ch. 300, L. 1967; R.C.M. 1947, 15-2222; amd. Sec. 36, Ch. 475, L. 1981.

35-1-612. En. Sec. 5, Ch. 300, L. 1967; R.C.M. 1947, 15-2205; amd. Sec. 37, Ch. 475, L. 1981; amd. Sec. 19, Ch. 131, L. 1983; amd. Sec. 16, Ch. 174, L. 1983.

35-1-613 through 35-1-616. Repealed. Sec. 62, Ch. 475, L. 1981.

Compiler's Comments

Histories of Repealed Sections:

35-1-613. En. Sec. 136, Ch. 300, L. 1967; R.C.M. 1947, 15-22-136(part).

35-1-614. En. Sec. 60, Ch. 300, L. 1967; R.C.M. 1947, 15-2260.

35-1-615. En. Sec. 61, Ch. 300, L. 1967; R.C.M. 1947, 15-2261.

35-1-616. En. Sec. 62, Ch. 300, L. 1967; R.C.M. 1947, 15-2262.

35-1-617. Repealed. Sec. 216, Ch. 368, L. 1991.

History: En. Sec. 38, Ch. 475, L. 1981.

35-1-618. Authorized shares. (1) The articles of incorporation must prescribe the classes of shares and the number of shares of each class that the corporation is authorized to issue. If more than one class of shares is authorized, the articles of incorporation must prescribe a distinguishing designation for each class. Prior to the issuance of shares of a class, the preferences, limitations, and relative rights of that class must be described in the articles of incorporation. All shares of a class must have preferences, limitations, and relative rights identical to those of other shares of the same class, except to the extent otherwise permitted by 35-1-619.

(2) (a) The articles of incorporation must authorize:

(i) one or more classes of shares that together have unlimited voting rights; and

(ii) one or more classes of shares which may be the same class or classes as those with voting rights.

(b) The classes of shares listed in subsections (2)(a)(i) and (2)(a)(ii), taken together are entitled to receive the net assets of the corporation upon dissolution.

(3) The articles of incorporation may authorize one or more classes of shares that:

(a) have special, conditional, or limited voting rights or no right to vote, except to the extent prohibited by this chapter;

(b) are redeemable or convertible as specified in the articles of incorporation:

(i) at the option of the corporation, the shareholder, or another person or upon the occurrence of a designated event;

(ii) for cash, indebtedness, securities, or other property; and

(iii) in a designated amount or in an amount determined in accordance with a designated formula or by reference to extrinsic data or events;

(c) entitle the holders to distributions calculated in any manner, including dividends that may be cumulative, noncumulative, or partially cumulative; and

(d) have preference over any other class of shares with respect to distributions, including dividends and distributions upon the dissolution of the corporation.

(4) The description of the designations, preferences, limitations, and relative rights of share classes in subsection (3) is not exhaustive.

(5) When authorized by its articles of incorporation to do so, a corporation may issue bonds, debentures, or other obligations convertible into shares of any class in the amounts and on terms and conditions that may be provided by resolutions of the board of directors.

History: En. Sec. 33, Ch. 368, L. 1991.

35-1-619. Terms of class or series determined by board of directors. (1) If the articles of incorporation so provide, the board of directors may determine, in whole or part, the preferences, limitations, and relative rights, within the limits set forth in 35-1-618, of any class of shares before the issuance of any shares of that class or of one or more series within a class before the issuance of any shares of that series.

(2) Each series of a class must be given a distinguishing designation.

(3) All shares of a series must have preferences, limitations, and relative rights identical to those of other shares of the same series and, except to the extent otherwise provided in the description of the series, to those of other series of the same class.

(4) Before issuing any shares of a class or series created under this section, the corporation shall deliver to the secretary of state, for filing, articles of amendment that are effective without shareholder action and that set forth:

(a) the name of the corporation;

(b) the text of the amendment determining the terms of the class or series of shares;

(c) the date the amendment was adopted; and

(d) a statement that the amendment was duly adopted by the board of directors.

History: En. Sec. 34, Ch. 368, L. 1991.

35-1-620. Issued and outstanding shares. (1) A corporation may issue the number of shares of each class or series authorized by the articles of incorporation. Subject to 35-1-630, shares that are issued are outstanding shares until they are reacquired, redeemed, converted, or canceled.

(2) The reacquisition, redemption, or conversion of outstanding shares is subject to 35-1-712 and to the limitations of subsection (3) of this section.

(3) Whenever shares of the corporation are outstanding, one or more shares that together have unlimited voting rights and one or more shares that together are entitled to receive the net assets of the corporation upon dissolution must be outstanding.

History: **En. Sec. 35, Ch. 368, L. 1991.**

35-1-621. Fractional shares. (1) A corporation may:

(a) issue fractions of a share or pay in money the value of fractions of a share;

(b) arrange for disposition of fractional shares by the shareholders; and

(c) issue scrip in registered or bearer form entitling the holder to receive a full share upon surrendering enough scrip to equal a full share.

(2) Each certificate representing scrip must be conspicuously labeled "scrip" and must contain the information required by 35-1-626.

(3) The holder of a fractional share is entitled to exercise the rights of a shareholder, including the right to vote, to receive dividends, and to participate in the assets of the corporation upon liquidation. The holder of scrip is not entitled to any of these rights unless the scrip provides for them.

(4) The board of directors may authorize the issuance of scrip subject to any condition considered desirable, including the condition:

(a) that the scrip will become void if not exchanged for full shares before a specified date; and

(b) that the shares for which the scrip is exchangeable may be sold and the proceeds paid to the scripholders.

History: **En. Sec. 36, Ch. 368, L. 1991.**

35-1-622. Subscription for shares before incorporation. (1) A subscription for shares entered into before incorporation is irrevocable for 6 months unless the subscription agreement provides a longer or shorter period or unless all the subscribers agree to revocation.

(2) The board of directors may determine the payment terms of subscriptions for shares that were entered into before incorporation, unless the subscription agreement specifies them. A call for payment by the board of directors must be uniform, so far as practicable, as to all shares of the same class or series unless the subscription agreement specifies otherwise.

(3) Shares issued pursuant to subscriptions entered into before incorporation are fully paid and nonassessable when the corporation receives the consideration specified in the subscription agreement.

(4) If a subscriber defaults in payment of money or property under a subscription agreement entered into before incorporation, the corporation may collect the amount owed in the same manner as it would collect any other debt. Alternatively, unless the subscription agreement provides otherwise, the corporation may rescind the agreement and may sell the shares if the debt remains unpaid more than 20 days after the corporation sends written demand for payment to the subscriber.

(5) A subscription agreement entered into after incorporation is a contract between the subscriber and the corporation and is subject to the provisions of 35-1-623.

History: **En. Sec. 37, Ch. 368, L. 1991.**

35-1-623. Issuance of shares. (1) The powers granted in this section to the board of directors may be reserved to the shareholders by the articles of incorporation.

(2) The board of directors may authorize shares to be issued for consideration consisting of any tangible or intangible property or benefit to the corporation, including cash, promissory notes, services performed, contracts for services to be performed, or other securities of the corporation.

(3) Before the corporation issues shares, the board of directors must determine that the consideration received or to be received for shares to be issued is adequate. The determination by the board of directors is conclusive with regard to the adequacy of consideration for the issuance of shares relating to whether the shares are validly issued, fully paid, and nonassessable.

(4) When the corporation receives the consideration for which the board of directors authorized the issuance of shares, the shares issued for the consideration are fully paid and nonassessable.

(5) The corporation may place in escrow shares issued for a contract for future services or benefits or a promissory note, or the corporation may also make other arrangements to restrict the transfer of the shares and may credit distributions in respect of the shares against their purchase price until the services are performed, the note is paid, or the benefits received. If the services are not performed, the note is not paid, or the benefits are not received, the shares escrowed or restricted and the distributions credited may be canceled in whole or in part.

History: En. Sec. 38, Ch. 368, L. 1991.

35-1-624. Share dividends. (1) Unless the articles of incorporation provide otherwise, shares may be issued pro rata and without consideration to the corporation's shareholders or to the shareholders of one or more classes or series. An issuance of shares under this subsection is a share dividend.

(2) Shares of one class or series may not be issued as a share dividend in respect of shares of another class or series unless:

(a) the articles of incorporation authorize the issuance;

(b) a majority of the votes entitled to be cast by the class or series to be issued approve the issue; or

(c) there are no outstanding shares of the class or series to be issued.

(3) If the board of directors does not fix the record date for determining shareholders entitled to a share dividend, the record date is the date the board of directors authorizes the share dividend.

History: En. Sec. 40, Ch. 368, L. 1991.

35-1-625. Share options. A corporation may issue rights, options, or warrants for the purchase of shares of the corporation. The board of directors shall determine the terms upon which the rights, options, or warrants are issued, their form and content, and the consideration for which the shares are to be issued.

History: En. Sec. 41, Ch. 368, L. 1991.

35-1-626. Form and content of certificates. (1) Shares may but need not be represented by certificates. Unless this chapter or another statute expressly provide otherwise, the rights and obligations of shareholders are identical whether or not their shares are represented by certificates.

(2) At a minimum, each share certificate must state on its face:

(a) the name of the issuing corporation and that it is organized under the law of this state;

(b) the name of the person to whom issued; and

(c) the number and class of shares and the designation of the series, if any, that the certificate represents.

(3) (a) If the issuing corporation is authorized to issue different classes of shares or different series within a class the following must be summarized on the front or back of each certificate:

(i) the designations, relative rights, preferences, and limitations applicable to each class;

(ii) the variations in rights, preferences, and limitations determined for each series; and

(iii) the authority of the board of directors to determine variations for future series.

(b) Alternatively, each certificate may state conspicuously on its front or back that the corporation will furnish the shareholder this information on request in writing and without charge.

(4) Each share certificate must be signed, either manually or in facsimile, by two officers designated in the bylaws or by the board of directors and may bear the corporate seal or its facsimile.

(5) If the person who signed, either manually or in facsimile, a share certificate no longer holds office when the certificate is issued, the certificate remains valid.

History: En. Sec. 42, Ch. 368, L. 1991.

Cross-References

Fraud as constituting theft, 45-6-301.

35-1-627. Shares without certificates. (1) Unless the articles of incorporation or bylaws provide otherwise, the board of directors of a corporation may authorize the issue of some or all of the shares of any or all of its classes or series without certificates. The authorization does not affect shares already represented by certificates until they are surrendered to the corporation.

(2) Within a reasonable time after the issuance or transfer of shares without certificates, the corporation shall send the shareholder a written statement of the information required on certificates by 35-1-626 and, if applicable, subsection (1) of this section.

History: En. Sec. 43, Ch. 368, L. 1991.

35-1-628. Restriction on transfer or registration of transfer of shares and other securities. (1) The articles of incorporation, the bylaws, an agreement among shareholders, or an agreement between shareholders and the corporation may impose restrictions on the transfer or registration of transfer of shares of the corporation. A restriction does not affect shares issued before the restriction was adopted unless the holders of the shares are parties to the restriction agreement or have voted in favor of the restriction.

(2) A restriction on the transfer or registration of transfer of shares is valid and enforceable against the holder or a transferee of the holder if the restriction is authorized by this section and its existence is noted conspicuously on the

front or back of the certificate or is contained in the information statement required by 35-1-627. Unless noted, a restriction is not enforceable against a person without knowledge of the restriction.

(3) A restriction on the transfer or registration of transfer of shares is authorized:

(a) to maintain the corporation's status when it is dependent on the number or identity of its shareholders;

(b) to preserve exemptions under federal or state securities law;

(c) to preserve an election under the Internal Revenue Code; or

(d) for any other reasonable purpose.

(4) A restriction on the transfer or registration of transfer of shares may:

(a) obligate the shareholder first to offer the corporation or other person, separately, consecutively, or simultaneously, an opportunity to acquire the restricted shares;

(b) obligate the corporation or other person, separately, consecutively, or simultaneously, to acquire the restricted shares;

(c) require the corporation, the holders of any class of its shares, or another person to approve the transfer of the restricted shares, if the requirement is not manifestly unreasonable; or

(d) prohibit the transfer of the restricted shares to designated persons or classes of persons if the prohibition is not manifestly unreasonable.

(5) For purposes of this section, "shares" includes a security convertible into or carrying a right to subscribe for or acquire shares.

History: En. Sec. 44, Ch. 368, L. 1991.

35-1-629. Expense of issue. A corporation may pay the expenses of selling or underwriting its shares and of organizing or reorganizing the corporation from the consideration received for shares.

History: En. Sec. 45, Ch. 368, L. 1991.

35-1-630. Corporation's acquisition of its own shares. (1) Except as provided in subsection (2), a corporation may acquire its own shares, and those shares constitute authorized but unissued shares.

(2) If provided by the corporation's articles of incorporation or bylaws, shares acquired pursuant to subsection (1) constitute authorized and issued shares. A corporation may at any time, by resolution of its board of directors, cancel all or any part of the shares acquired under this subsection, in which case the shares constitute authorized but unissued shares.

(3) If the articles of incorporation prohibit the reissue of acquired shares, the number of authorized shares is reduced by the number of shares acquired, effective on amendment of the articles of incorporation.

(4) Articles of amendment may be adopted by the board of directors without shareholder action, must be delivered to the secretary of state, for filing, and must set forth:

(a) the name of the corporation;

(b) the reduction in the number of authorized shares, itemized by class and series; and

(c) the total number of authorized shares, itemized by class and series, remaining after reduction of the shares.

History: En. Sec. 47, Ch. 368, L. 1991.

Cross-References

Merger, consolidation, share exchange, and sale of assets, Title 35, ch. 1, part 8.

Part 7
Distributions

35-1-701 through 35-1-705. Repealed. Sec. 62, Ch. 475, L. 1981.

Compiler's Comments

Histories of Repealed Sections:

35-1-701. En. Sec. 40, Ch. 300, L. 1967; R.C.M. 1947, 15-2240(part).

35-1-702. En. Sec. 40, Ch. 300, L. 1967; R.C.M. 1947, 15-2240(part).

35-1-703. En. Sec. 41, Ch. 300, L. 1967; R.C.M. 1947, 15-2241.

35-1-704. En. Sec. 63, Ch. 300, L. 1967; R.C.M. 1947, 15-2263.

35-1-705. En. Sec. 64, Ch. 300, L. 1967; R.C.M. 1947, 15-2264.

35-1-706 through 35-1-710 reserved.

35-1-711. Repealed. Sec. 216, Ch. 368, L. 1991.

History: En. Sec. 39, Ch. 475, L. 1981.

35-1-712. Distributions to shareholders. (1) A board of directors may authorize and the corporation may make distributions to its shareholders, subject to restriction by the articles of incorporation and the limitation in subsection (3).

(2) If the board of directors does not fix the record date for determining shareholders entitled to a distribution, other than a distribution involving a repurchase or reacquisition of shares, it is the date the board of directors authorizes the distribution.

(3) A distribution may not be made if, after giving it effect:

(a) the corporation would not be able to pay its debts as they become due in the usual course of business; or

(b) the corporation's total assets would be less than the sum of its total liabilities plus, unless the articles of incorporation permit otherwise, the amount that would be needed, if the corporation were to be dissolved at the time of the distribution, to satisfy the preferential rights upon dissolution of shareholders whose preferential rights are superior to those receiving the distribution.

(4) The board of directors may base a determination that a distribution is not prohibited under subsection (3) either on financial statements prepared on the basis of accounting practices and principles that are reasonable in the circumstances or on a fair valuation or other method that is reasonable in the circumstances.

(5) The effect of a distribution under subsection (1) is measured:

(a) in the case of distribution by purchase, redemption, or other acquisition of the corporation's shares, as of the earlier of:

(i) the date money or other property is transferred or debt incurred by the corporation; or

(ii) the date the shareholder ceases to be a shareholder with respect to the acquired shares;

(b) in the case of any other distribution of indebtedness, as of the date the indebtedness is distributed; or

(c) in all other cases, as of:

(i) the date the distribution is authorized if the payment occurs within 120 days after the date of authorization; or

(ii) the date the payment is made if it occurs more than 120 days after the date of authorization.

(6) A corporation's indebtedness to a shareholder incurred by reason of a distribution made in accordance with this section is at parity with the corporation's indebtedness to its general, unsecured creditors except to the extent subordinated by agreement.

History: En. Sec. 48, Ch. 368, L. 1991.

35-1-713. Liability for unlawful distributions. (1) Unless the director complies with the applicable standards of conduct described in 35-1-418, a director who votes for or assents to a distribution made in violation of this chapter or the articles of incorporation is personally liable to the corporation for the amount of the distribution that exceeds what could have been distributed without violating this chapter or the articles of incorporation.

(2) A director held liable for an unlawful distribution under subsection (1) is entitled to contribution:

(a) from every other director who voted for or assented to the distribution and who did not comply with the applicable standards of conduct described in 35-1-418; and

(b) from each shareholder for the amount the shareholder accepted if the shareholder knows the distribution was made in violation of this chapter or the articles of incorporation.

History: En. Sec. 93, Ch. 368, L. 1991.

Part 8

Merger, Consolidation, Share Exchange, and Sale of Assets

35-1-801. Repealed. Sec. 216, Ch. 368, L. 1991.

History: En. Sec. 65, Ch. 300, L. 1967; R.C.M. 1947, 15-2265; amd. Sec. 1, Ch. 328, L. 1979; amd. Sec. 40, Ch. 475, L. 1981.

35-1-802. Repealed. Sec. 62, Ch. 475, L. 1981.

History: En. Sec. 66, Ch. 300, L. 1967; R.C.M. 1947, 15-2266; amd. Sec. 2, Ch. 328, L. 1979.

35-1-803 through 35-1-810. Repealed. Sec. 216, Ch. 368, L. 1991.

Compiler's Comments

Histories of Repealed Sections:

35-1-803. En. Sec. 67, Ch. 300, L. 1967; R.C.M. 1947, 15-2267; amd. Sec. 41, Ch. 475, L. 1981.

35-1-804. En. Sec. 68, Ch. 300, L. 1967; R.C.M. 1947, 15-2268(part); amd. Sec. 42, Ch. 475, L. 1981; amd. Sec. 20, Ch. 131, L. 1983; amd. Sec. 17, Ch. 174, L. 1983.

35-1-805. En. Sec. 68, Ch. 300, L. 1967; R.C.M. 1947, 15-2268(part); amd. Sec. 43, Ch. 475, L. 1981; amd. Sec. 21, Ch. 131, L. 1983; amd. Sec. 18, Ch. 174, L. 1983.

35-1-806. En. Sec. 69, Ch. 300, L. 1967; R.C.M. 1947, 15-2269; amd. Sec. 44, Ch. 435, L. 1981.

35-1-807. En. Sec. 70, Ch. 300, L. 1967; R.C.M. 1947, 15-2270; amd. Sec. 45, Ch. 475, L. 1981.

35-1-808. En. Sec. 71, Ch. 300, L. 1967; R.C.M. 1947, 15-2271; amd. Sec. 46, Ch. 475, L. 1981.

35-1-809. En. Sec. 72, Ch. 300, L. 1967; amd. Sec. 1, Ch. 125, L. 1969; R.C.M. 1947, 15-2272; amd. Sec. 47, Ch. 475, L. 1981.

35-1-810. En. Sec. 73, Ch. 300, L. 1967; R.C.M. 1947, 15-2273; amd. Sec. 48, Ch. 475, L. 1981.

35-1-811. Repealed. Sec. 62, Ch. 475, L. 1981.

History: En. Sec. 74, Ch. 300, L. 1967; amd. Sec. 11, Ch. 62, L. 1977; R.C.M. 1947, 15-2274.

35-1-812. Repealed. Sec. 216, Ch. 368, L. 1991.

History: En. Sec. 49, Ch. 475, L. 1981.

35-1-813. Merger. (1) One or more corporations may merge into another corporation if the board of directors of each corporation adopts and its shareholders, if required by 35-1-815, approve a plan of merger.

(2) The plan of merger must set forth:

(a) the name of each corporation planning to merge and the name of the surviving corporation into which each other corporation plans to merge;

(b) the terms and conditions of the merger; and

(c) the manner and basis of converting the shares of each corporation into shares, obligations, or other securities of the surviving corporation or any other corporation or into cash or other property in whole or part.

(3) The plan of merger may set forth:

(a) amendments to the articles of incorporation of the surviving corporation; and

(b) other provisions relating to the merger.

History: En. Sec. 124, Ch. 368, L. 1991.

35-1-814. Share exchange. (1) A corporation may acquire all of the outstanding shares of one or more classes or series of another corporation if the board of directors of each corporation adopts and its shareholders, if required by 35-1-815, approve the exchange.

(2) The plan of exchange must set forth:

(a) the name of the corporation from which shares will be acquired and the name of the acquiring corporation;

(b) the terms and conditions of the exchange; and

(c) the manner and basis of exchanging the shares to be acquired for shares, obligations, or other securities of the acquiring corporation or any other corporation or for cash or other property in whole or part.

(3) The plan of exchange may set forth any other provision relating to the exchange.

(4) This section does not limit the power of a corporation to acquire all or part of the shares of one or more classes or series of another corporation through a voluntary exchange or otherwise.

History: En. Sec. 125, Ch. 368, L. 1991.

35-1-815. Action on plan. (1) Except as provided in subsection (7), after adopting a plan of merger or share exchange, the board of directors of each corporation party to the merger and the board of directors of the corporation whose shares will be acquired in the share exchange shall submit the plan of merger, except as provided in subsection (7), or share exchange for approval by its shareholders.

(2) For a plan of merger or share exchange to be approved:

(a) the board of directors shall recommend the plan of merger or share exchange to the shareholders, unless the board of directors determines that because of conflict of interest or other special circumstances it should make no recommendation and communicates the basis for its determination to the shareholders with the plan; and

(b) the shareholders entitled to vote shall approve the plan.

(3) The board of directors may condition its submission of the proposed merger or share exchange on any basis.

(4) The corporation shall notify each shareholder, whether or not entitled to vote, of the proposed shareholders' meeting in accordance with 35-1-520. The notice must also state that the purpose or one of the purposes of the meeting is to consider the plan of merger or share exchange and must contain or be accompanied by a copy or summary of the plan.

(5) Unless this chapter, the articles of incorporation, or the board of directors, acting pursuant to subsection (3), require a greater vote or a vote by voting groups, the plan of merger or share exchange to be authorized must be approved by each voting group entitled to vote separately on the plan by an affirmative vote of two-thirds, or a majority vote if authorized by subsection (10), of the votes entitled to be cast on the plan by that voting group.

(6) Separate voting by voting groups is required:

(a) on a plan of merger if the plan contains a provision that, if contained in a proposed amendment to articles of incorporation, would require action by one or more separate voting groups on the proposed amendment under 35-1-228; and

(b) on a plan of share exchange by each class or series of shares included in the exchange, with each class or series constituting a separate voting group.

(7) Action by the shareholders of the surviving corporation on a plan of merger is not required if:

(a) the articles of incorporation of the surviving corporation will not differ, except for amendments enumerated in 35-1-226, from its articles before the merger;

(b) each shareholder of the surviving corporation whose shares were outstanding immediately before the effective date of the merger will hold the same number of shares, with identical designations, preferences, limitations, and relative rights, immediately after the merger;

(c) the number of voting shares outstanding immediately after the merger plus the number of voting shares issuable as a result of the merger, either by the conversion of securities issued pursuant to the merger or the exercise of rights and warrants issued pursuant to the merger, will not exceed by more than 20% the total number of voting shares of the surviving corporation outstanding immediately before the merger; and

(d) the number of participating shares outstanding immediately after the merger plus the number of participating shares issuable as a result of the merger, either by the conversion of securities issued pursuant to the merger or the exercise of rights and warrants issued pursuant to the merger, will not exceed by more than 20% the total number of participating shares outstanding immediately before the merger.

(8) As used in subsection (7):

(a) "participating shares" means shares that entitle their shareholders to participate without limitation in distributions; and

(b) "voting shares" means shares that entitle their shareholders to vote unconditionally in elections of directors.

(9) After a merger or share exchange is authorized and at any time before articles of merger or share exchange are filed, the planned merger or share exchange may be abandoned, subject to any contractual rights, without further shareholder action in accordance with the procedure set forth in the plan of merger or share exchange or, if no procedure is set forth, in the manner determined by the board of directors.

(10) A majority of all votes entitled to be cast by each voting group is sufficient to constitute approval by the corporation if a statement to that effect is included in the articles of incorporation but only if:

(a) the statement is included in the articles of incorporation at the time the initial articles of incorporation were filed; or

(b) the statement is included in an amendment to the articles of incorporation approved by an affirmative vote of two-thirds of the votes entitled to be cast on the amendment pursuant to 35-1-227.

History: En. Sec. 126, Ch. 368, L. 1991.

Cross-References

Appeal from Secretary of State's refusal to file articles of merger or consolidation, 35-1-1310.

35-1-816. Articles of merger or share exchange. (1) After a plan of merger or share exchange is approved by the shareholders or adopted by the board of directors if shareholder approval is not required, the surviving or acquiring corporation shall deliver to the secretary of state, for filing, articles of merger or share exchange setting forth:

(a) the plan of merger or share exchange; and

(b) if shareholder approval was not required, a statement to that effect; or

(c) if approval of the shareholders of one or more corporations party to the merger or share exchange was required:

(i) the designation, number of outstanding shares, and number of votes entitled to be cast by each voting group entitled to vote separately on the plan as to each corporation; and

(ii) either the total number of votes cast for and against the plan by each voting group entitled to vote separately on the plan or the total number of undisputed votes cast for the plan separately by each voting group and a statement that the number cast for the plan by each voting group was sufficient for approval by that voting group.

(2) Unless a delayed effective date is specified, a merger or share exchange takes effect when the articles of merger or share exchange are filed.

History: En. Sec. 128, Ch. 368, L. 1991.

35-1-817. Effect of merger or share exchange. (1) When a merger takes effect:

(a) every other corporation party to the merger merges into the surviving corporation and the separate existence of every corporation except the surviving corporation ceases;

(b) the title to all real estate and other property owned by each corporation party to the merger is vested in the surviving corporation without reversion or impairment;

(c) the surviving corporation has all liabilities of each corporation party to the merger;

(d) a proceeding pending against any corporation party to the merger may be continued as if the merger did not occur or the surviving corporation may be substituted in the proceeding for the corporation whose existence ceased;

(e) the articles of incorporation of the surviving corporation are amended to the extent provided in the plan of merger; and

(f) the shares of each corporation party to the merger that are to be converted into shares, obligations, or other securities of the surviving or any other corporation or into cash or other property are converted and the former shareholders are entitled only to the rights provided in the articles of merger or to their rights under 35-1-826 through 35-1-839.

(2) When a share exchange takes effect, the shares of each acquired corporation are exchanged as provided in the plan and the former shareholders are entitled only to the exchange rights provided in the articles of share exchange or to their rights under 35-1-826 through 35-1-839.

History: En. Sec. 129, Ch. 368, L. 1991.

35-1-818. Merger of subsidiary. (1) A parent corporation owning at least 80% of the outstanding shares of each class of a subsidiary corporation may merge the subsidiary into itself without approval of the shareholders of the parent corporation or subsidiary.

(2) The board of directors of the parent corporation shall adopt a plan of merger that sets forth:

(a) the names of the parent corporation and subsidiary; and

(b) the manner and basis of converting the shares of the subsidiary into shares, obligations, or other securities of the parent corporation or any other corporation or into cash or other property in whole or part.

(3) The parent corporation shall mail a copy of the summary of the plan of merger to each shareholder of the subsidiary who does not waive the mailing requirement in writing.

(4) The parent corporation may not deliver articles of merger to the secretary of state for filing until at least 30 days after the date it mailed a copy of the plan of merger to each shareholder of the subsidiary who did not waive the mailing requirement.

(5) Articles of merger under this section may not contain amendments to the articles of incorporation of the parent corporation except for amendments enumerated in 35-1-226.

History: En. Sec. 127, Ch. 368, L. 1991.

35-1-819. Merger or share exchange with foreign corporation. (1) One or more foreign corporations may merge or enter into a share exchange with one or more domestic corporations if:

(a) in a merger, the merger is permitted by the law of the state or country under whose law each foreign corporation is incorporated and each foreign corporation complies with that law in effecting the merger; or

(b) in a share exchange, the corporation whose shares will be acquired is a domestic corporation, whether or not a share exchange is permitted by the law of the state or country under whose law the acquiring corporation is incorporated;

(c) the foreign corporation complies with 35-1-816 and if it is the surviving corporation of the merger or acquiring corporation of the share exchange; and

(d) each domestic corporation complies with the applicable provisions of 35-1-813 through 35-1-815 and 35-1-818 and, if it is the surviving corporation of the merger or acquiring corporation of the share exchange, with the provisions of 35-1-816.

(2) When the merger or share exchange takes effect, the surviving foreign corporation of a merger and the acquiring foreign corporation of a share exchange is considered:

(a) to have appointed the secretary of state as its agent for service of process in a proceeding to enforce any obligation or the rights of dissenting shareholders of each domestic corporation party to the merger or share exchange; and

(b) to have agreed that it will promptly pay to the dissenting shareholders of each domestic corporation party to the merger or share exchange the amount, if any, to which they are entitled under 35-1-826 through 35-1-839.

(3) This section does not limit the power of a foreign corporation to acquire all or part of the shares of one or more classes or series of a domestic corporation through a voluntary exchange or otherwise.

History: En. Sec. 130, Ch. 368, L. 1991.

Cross-References

Service of process on Secretary of State, Rule 4D, M.R.Civ.P. (see Title 25, ch. 20).

Authority of foreign corporation to transact business, 35-1-1026.

Appeal from Secretary of State's refusal to file articles of merger, 35-1-1310.

35-1-820. Shareholder agreements. (1) An agreement among the shareholders of a corporation that complies with this section is effective among the shareholders and the corporation even though it is inconsistent with one or more other provisions of this chapter in that it:

(a) eliminates the board of directors or restricts the discretion or powers of the board of directors;

(b) governs the authorization or making of distributions, whether or not in proportion to ownership of shares, subject to the limitations in 35-1-712;

(c) establishes who must be directors or officers of the corporation or their terms of office or manner of selection or removal;

(d) governs, in general or in regard to specific matters, the exercise or division of voting power by or between the shareholders and directors or by or among any of them, including use of weighted voting rights or director proxies;

(e) establishes the terms and conditions of any agreement for the transfer or use of property or the provision of services between the corporation and any shareholder, director, officer, or employee of the corporation or among any of them;

(f) transfers to one or more shareholders or other persons all or part of the authority to exercise the corporate powers or to manage the business and affairs of the corporation, including the resolution of any issue about which there exists a deadlock among directors or shareholders;

(g) requires dissolution of the corporation at the request of one or more of the shareholders or upon the occurrence of a specified event or contingency; or

(h) otherwise governs the exercise of the corporate powers or the management of the business and affairs of the corporation or the relationship among the shareholders, the directors, and the corporation or among any of them and is not contrary to public policy.

(2) An agreement authorized by this section must be:

(a) set forth:

(i) in the articles of incorporation or bylaws and approved by all persons who are shareholders at the time of the agreement; or

(ii) in a written agreement that is signed by all persons who are shareholders at the time of the agreement and that is made known to the corporation;

(b) subject to amendment only by all persons who are shareholders at the time of the amendment, unless the agreement provides otherwise; and

(c) valid for 10 years, unless the agreement provides otherwise.

(3) The existence of an agreement authorized by this section must be noted conspicuously on the front or back of each certificate for outstanding shares or on the information statement required by 35-1-627(2). If at the time of the agreement the corporation has shares outstanding represented by certificates, the corporation shall recall the outstanding certificates and issue substitute certificates that comply with this subsection. The failure to note the existence of the agreement on the certificate or information statement may not affect the validity of the agreement or any action taken pursuant to it. Any purchaser of shares who, at the time of purchase, did not have knowledge of the existence of the agreement must be entitled to rescission of the purchase. A purchaser is considered to have knowledge of the existence of the agreement if its existence is noted on the certificate or information statement for the shares in compliance with this subsection and, if the shares are not represented by a certificate, the information statement is delivered to the purchaser at or prior to the time of purchase of the shares. An action to enforce the right of rescission authorized by this subsection must be commenced within the earlier of 90 days after discovery of the existence of the agreement or 2 years after the time of purchase of the shares.

(4) An agreement authorized by this section must cease to be effective when shares of the corporation are listed on a national securities exchange or regularly traded in a market maintained by one or more members of a national or affiliated securities association. If the agreement ceases to be effective for any reason, the board of directors may, if the agreement is contained or referred to in the corporation's articles of incorporation or bylaws, adopt an amendment to the articles of incorporation or bylaws, without shareholder action, to delete the agreement and any references to it.

(5) An agreement authorized by this section that limits the discretion or powers of the board of directors must relieve the directors of, and impose upon the person or persons in whom the discretion or powers are vested, liability for acts or omissions imposed by law on directors to the extent that the discretion or powers of the directors are limited by the agreement.

(6) The existence or performance of an agreement authorized by this section may not be a ground for imposing personal liability on any shareholders for the acts or debts of the corporation even if the agreement or its performance treats the corporation as if it were a partnership or results in failure to observe the corporate formalities otherwise applicable to the matters governed by the agreement.

(7) Incorporators or subscribers for shares may act as shareholders with respect to an agreement authorized by this section if shares have not been issued when the agreement is made.

History: **En. Sec. 1, Ch. 268, L. 1997.**

35-1-821 reserved.

35-1-822. Sale of assets in regular course of business — mortgage of assets. (1) A corporation may, on the terms and conditions and for the consideration determined by the board of directors:

(a) sell, lease, exchange, or otherwise dispose of all or substantially all of its property in the usual and regular course of business;

(b) mortgage, pledge, dedicate to the repayment of indebtedness, whether with or without recourse, or otherwise encumber any or all of its property whether or not in the usual and regular course of business; or

(c) transfer any or all of its property to another corporation all the shares of which are owned by the corporation.

(2) Unless the articles of incorporation require it, approval by the shareholders of a transaction described in subsection (1) is not required.

History: **En. Sec. 131, Ch. 368, L. 1991.**

Cross-References

Activities not to be considered transacting business, 35-1-1026.

35-1-823. Sale of assets other than in regular course of business. (1) A corporation may sell, lease, exchange, or otherwise dispose of all or substantially all of its property, which may include good will, otherwise than in the usual and regular course of business, on the terms and conditions and for the consideration determined by the corporation's board of directors if the board of directors proposes and its shareholders approve the proposed transaction.

(2) For a transaction under this section to be authorized:

(a) the board of directors shall recommend the proposed transaction to the shareholders unless the board of directors determines that because of conflict of interest or other special circumstances it should make no recommendation and communicates the basis for its determination to the shareholders with the submission of the proposed transaction; and

(b) the shareholders entitled to vote shall approve the transaction.

(3) The board of directors may condition its submission of the proposed transaction on any basis.

(4) The corporation shall notify each shareholder, whether or not entitled to vote, of the proposed shareholders' meeting in accordance with 35-1-520. The notice must also state that the purpose or one of the purposes of the meeting is to consider the sale, lease, exchange, or other disposition of all or substantially all the property of the corporation and must contain or be accompanied by a description of the transaction.

(5) Unless the articles of incorporation, or the board of directors acting pursuant to subsection (3), require a greater vote or a vote by voting groups, the transaction to be authorized must be approved by an affirmative vote of two-thirds, or a majority if authorized by subsection (8), of the votes entitled to be cast on the transaction.

(6) After a sale, lease, exchange, or other disposition of property is authorized, the transaction may be abandoned, subject to any contractual rights, without further shareholders' action.

(7) A transaction that constitutes a distribution is governed by 35-1-712 and not by this section.

(8) A majority of votes cast by the shareholders is sufficient to constitute approval by the corporation if a statement to that effect is included in the articles of incorporation but only if:

(a) the statement is included in the articles of incorporation at the time the initial articles of incorporation were filed; or

(b) the statement is included in an amendment to the articles of incorporation approved by an affirmative vote of two-thirds of the votes entitled to be cast on the amendment pursuant to 35-1-227.

History: En. Sec. 132, Ch. 368, L. 1991.

35-1-824 and 35-1-825 reserved.

35-1-826. Definitions. As used in 35-1-826 through 35-1-839, the following definitions apply:

(1) "Beneficial shareholder" means the person who is a beneficial owner of shares held in a voting trust or by a nominee as the record shareholder.

(2) "Corporation" includes the issuer of the shares held by a dissenter before the corporate action, or the surviving or acquiring corporation by merger or share exchange of that issuer.

(3) "Dissenter" means a shareholder who is entitled to dissent from corporate action under 35-1-827 and who exercises that right when and in the manner required by 35-1-829 through 35-1-837.

(4) "Fair value", with respect to a dissenter's shares, means the value of the shares immediately before the effectuation of the corporate action to which the dissenter objects, excluding any appreciation or depreciation in anticipation of the corporate action unless exclusion would be inequitable.

(5) "Interest" means interest from the effective date of the corporate action until the date of payment at the average rate currently paid by the corporation on its principal bank loans or, if the corporation has no loans, at a rate that is fair and equitable under all the circumstances.

(6) "Record shareholder" means the person in whose name shares are registered in the records of a corporation or the beneficial shareholder to the extent of the rights granted by a nominee certificate on file with a corporation.

(7) "Shareholder" means the record shareholder or the beneficial shareholder.

History: En. Sec. 133, Ch. 368, L. 1991.

35-1-827. Right to dissent. (1) A shareholder is entitled to dissent from and obtain payment of the fair value of the shareholder's shares in the event of any of the following corporate actions:

(a) consummation of a plan of merger to which the corporation is a party if:

(i) shareholder approval is required for the merger by 35-1-815 or the articles of incorporation and the shareholder is entitled to vote on the merger; or

(ii) the corporation is a subsidiary that is merged with its parent corporation under 35-1-818;

(b) consummation of a plan of share exchange to which the corporation is a party as the corporation whose shares will be acquired if the shareholder is entitled to vote on the plan;

(c) consummation of a sale or exchange of all or substantially all of the property of the corporation other than in the usual and regular course of business if the shareholder is entitled to vote on the sale or exchange, including a sale in dissolution but not including a sale pursuant to court order or a sale for cash pursuant to a plan by which all or substantially all of the net proceeds of the sale will be distributed to the shareholders within 1 year after the date of sale;

(d) an amendment of the articles of incorporation that materially and adversely affects rights in respect of a dissenter's shares because it:

(i) alters or abolishes a preferential right of the shares;

(ii) creates, alters, or abolishes a right in respect of redemption, including a provision with respect to a sinking fund for the redemption or repurchase of the shares;

(iii) alters or abolishes a preemptive right of the holder of the shares to acquire shares or other securities;

(iv) excludes or limits the right of the shares to be voted on any matter or to cumulate votes, other than a limitation by dilution through issuance of shares or other securities with similar voting rights; or

(v) reduces the number of shares owned by the shareholder to a fraction of a share if the fractional share created is to be acquired for cash under 35-1-621; or

(e) any corporate action taken pursuant to a shareholder vote to the extent the articles of incorporation, bylaws, or a resolution of the board of directors provides that voting or nonvoting shareholders are entitled to dissent and to obtain payment for their shares.

(2) A shareholder entitled to dissent and to obtain payment for shares under 35-1-826 through 35-1-839 may not challenge the corporate action creating the shareholder's entitlement unless the action is unlawful or fraudulent with respect to the shareholder or the corporation.

History: En. Sec. 134, Ch. 368, L. 1991; amd. Sec. 2, Ch. 249, L. 1993.

35-1-828. Dissent by nominees and beneficial owners. (1) A record shareholder may assert dissenters' rights as to fewer than all the shares registered in his name only if he dissents with respect to all shares beneficially owned by any one person and notifies the corporation in writing of the name and address of each person on whose behalf he asserts dissenters' rights. The rights of a partial dissenter under this subsection are determined as if the shares as to which he dissents and his other shares were registered in the names of different shareholders.

(2) A beneficial shareholder may assert dissenters' rights as to shares held on his behalf only if:

(a) he submits to the corporation the record shareholder's written consent to the dissent not later than the time the beneficial shareholder asserts dissenters' rights; and

(b) he does so with respect to all shares of which he is the beneficial shareholder or over which he has power to direct the vote.

History: En. Sec. 135, Ch. 368, L. 1991.

35-1-829. Notice of dissenters' rights. (1) If a proposed corporate action creating dissenters' rights under 35-1-827 is submitted to a vote at a shareholders' meeting, the meeting notice must state that shareholders are or may be entitled to assert dissenters' rights under 35-1-826 through 35-1-839 and must be accompanied by a copy of 35-1-826 through 35-1-839.

(2) If a corporate action creating dissenters' rights under 35-1-827 is taken without a vote of shareholders, the corporation shall give written notification to all shareholders entitled to assert dissenters' rights that the action was taken and shall send them the dissenters' notice described in 35-1-831.

History: En. Sec. 136, Ch. 368, L. 1991.

35-1-830. Notice of intent to demand payment. (1) If proposed corporate action creating dissenters' rights under 35-1-827 is submitted to a vote at a shareholders' meeting, a shareholder who wishes to assert dissenters' rights:

(a) shall deliver to the corporation before the vote is taken written notice of his intent to demand payment for his shares if the proposed action is effectuated; and

(b) may not vote his shares in favor of the proposed action.

(2) A shareholder who does not satisfy the requirements of subsection (1)(a) is not entitled to payment for his shares under 35-1-826 through 35-1-839.

History: En. Sec. 137, Ch. 368, L. 1991.

35-1-831. Dissenters' notice. (1) If proposed corporate action creating dissenters' rights under 35-1-827 is authorized at a shareholders' meeting, the corporation shall deliver a written dissenters' notice to all shareholders who satisfied the requirements of 35-1-830.

(2) The dissenters' notice must be sent no later than 10 days after the corporate action was taken and must:

(a) state where the payment demand must be sent and where and when certificates for certified shares must be deposited;

(b) inform shareholders of uncertificated shares to what extent transfer of the shares will be restricted after the payment is received;

(c) supply a form for demanding payment that includes the date of the first announcement to news media or to shareholders of the terms of the proposed corporate action and that requires the person asserting dissenters' rights to certify whether or not he acquired beneficial ownership of the shares before that date;

(d) set a date by which the corporation must receive the payment demand, which may not be fewer than 30 nor more than 60 days after the date the required notice under subsection (1) is delivered; and

(e) be accompanied by a copy of 35-1-826 through 35-1-839.

History: En. Sec. 138, Ch. 368, L. 1991.

35-1-832. Duty to demand payment. (1) A shareholder sent a dissenters' notice described in 35-1-831 shall demand payment, certify whether the shareholder acquired beneficial ownership of the shares before the date required to be set forth in the dissenters' notice pursuant to 35-1-831(2)(c), and deposit his certificates in accordance with the terms of the notice.

(2) The shareholder who demands payment and deposits his certificates under subsection (1) retains all other rights of a shareholder until these rights are canceled or modified by the taking of the proposed corporate action.

(3) A shareholder who does not demand payment or deposit his certificates where required, each by the date set in the dissenters' notice, is not entitled to payment for his shares under 35-1-826 through 35-1-839.

History: En. Sec. 139, Ch. 368, L. 1991.

35-1-833. Share restrictions. (1) The corporation may restrict the transfer of uncertificated shares from the date the demand for their payment is received until the proposed corporate action is taken or the restrictions are released under 35-1-835.

(2) The person for whom dissenters' rights are asserted as to uncertificated shares retains all other rights of a shareholder until these rights are canceled or modified by the taking of the proposed corporate action.

History: En. Sec. 140, Ch. 368, L. 1991.

35-1-834. Payment. (1) Except as provided in 35-1-836, as soon as the proposed corporate action is taken or upon receipt of a payment demand, the corporation shall pay each dissenter who complied with 35-1-832 the amount the corporation estimates to be the fair value of the dissenter's shares plus accrued interest.

(2) The payment must be accompanied by:

(a) the corporation's balance sheet as of the end of a fiscal year ending not more than 16 months before the date of payment, an income statement for that year, a statement of changes in shareholders' equity for that year, and the latest available interim financial statements, if any;

(b) a statement of the corporation's estimate of the fair value of the shares;

(c) an explanation of how the interest was calculated;

(d) a statement of the dissenter's right to demand payment under 35-1-837; and

(e) a copy of 35-1-826 through 35-1-839.

History: En. Sec. 141, Ch. 368, L. 1991.

35-1-835. Failure to take action. (1) If the corporation does not take the proposed action within 60 days after the date set for demanding payment and depositing certificates, the corporation shall return the deposited certificates and release the transfer restrictions imposed on uncertificated shares.

(2) If after returning deposited certificates and releasing transfer restrictions, the corporation takes the proposed action, it shall send a new dissenters' notice under 35-1-831 and repeat the payment demand procedure.

History: En. Sec. 142, Ch. 368, L. 1991.

35-1-836. After-acquired shares. (1) A corporation may elect to withhold payment required by 35-1-834 from a dissenter unless the dissenter was the beneficial owner of the shares before the date set forth in the dissenters' notice as the date of the first announcement to news media or to shareholders of the terms of the proposed corporate action.

(2) To the extent the corporation elects to withhold payment under subsection (1), after taking the proposed corporate action, the corporation shall estimate the fair value of the shares plus accrued interest and shall pay this amount to each dissenter who agrees to accept it in full satisfaction of his demand. The corporation shall send with its offer a statement of its estimate of the fair value of the shares, an explanation of how the interest was calculated, and a statement of the dissenter's right to demand payment under 35-1-837.

History: En. Sec. 143, Ch. 368, L. 1991.

35-1-837. Procedure if shareholder dissatisfied with payment or offer. (1) A dissenter may notify the corporation in writing of the dissenter's own estimate of the fair value of the dissenter's shares and the amount of interest due and may demand payment of the dissenter's estimate, less any payment under 35-1-834, or reject the corporation's offer under 35-1-836 and demand payment of the fair value of the dissenter's shares and the interest due if:

(a) the dissenter believes that the amount paid under 35-1-834 or offered under 35-1-836 is less than the fair value of the dissenter's shares or that the interest due is incorrectly calculated;

(b) the corporation fails to make payment under 35-1-834 within 60 days after the date set for demanding payment; or

(c) the corporation, having failed to take the proposed action, does not return the deposited certificates or release the transfer restrictions imposed on uncertificated shares within 60 days after the date set for demanding payment.

(2) A dissenter waives the right to demand payment under this section unless he notifies the corporation of his demand in writing under subsection (1) within 30 days after the corporation made or offered payment for his shares.

History: En. Sec. 144, Ch. 368, L. 1991.

35-1-838. Court action. (1) If a demand for payment under 35-1-837 remains unsettled, the corporation shall commence a proceeding within 60 days after receiving the payment demand and shall petition the court to determine the fair value of the shares and accrued interest. If the corporation does not commence the proceeding within the 60-day period, it shall pay each dissenter whose demand remains unsettled the amount demanded.

(2) The corporation shall commence the proceeding in the district court of the county where a corporation's principal office or, if its principal office is not located in this state, where its registered office is located. If the corporation is a foreign corporation without a registered office in this state, it shall commence the proceeding in the county in this state where the registered office of the domestic corporation merged with or whose shares were acquired by the foreign corporation was located.

(3) The corporation shall make all dissenters whose demands remain unsettled, whether or not residents of this state, parties to the proceeding as in an action against their shares, and all parties must be served with a copy of the petition. Nonresidents may be served by certified mail or by publication as provided by law.

(4) The jurisdiction of the district court in which the proceeding is commenced under subsection (2) is plenary and exclusive. The court may appoint one or more persons as appraisers to receive evidence and recommend decision on the question of fair value. The appraisers have the powers described

in the order appointing them or in any amendment to it. The dissenters are entitled to the same discovery rights as parties in other civil proceedings.

(5) Each dissenter made a party to the proceeding is entitled to judgment:

(a) for the amount, if any, by which the court finds the fair value of the dissenter's shares plus interest exceeds the amount paid by the corporation; or

(b) for the fair value plus accrued interest of his after-acquired shares for which the corporation elected to withhold payment under 35-1-836.

History: En. Sec. 145, Ch. 368, L. 1991.

35-1-839. Court costs and attorney fees. (1) The court in an appraisal proceeding commenced under 35-1-838 shall determine all costs of the proceeding, including the reasonable compensation and expenses of appraisers appointed by the court. The court shall assess the costs against the corporation, except that the court may assess costs against all or some of the dissenters, in amounts the court finds equitable, to the extent the court finds dissenters acted arbitrarily, vexatiously, or not in good faith in demanding payment under 35-1-837.

(2) The court may also assess the fees and expenses of counsel and experts for the respective parties, in amounts the court finds equitable:

(a) against the corporation and in favor of any or all dissenters if the court finds the corporation did not substantially comply with the requirements of 35-1-829 through 35-1-837; or

(b) against either the corporation or a dissenter, in favor of any other party, if the court finds that the party against whom the fees and expenses are assessed acted arbitrarily, vexatiously, or not in good faith with respect to the rights provided by 35-1-826 through 35-1-839.

(3) If the court finds that the services of counsel for any dissenter were of substantial benefit to other dissenters similarly situated and that the fees for those services should not be assessed against the corporation, the court may award the counsel reasonable attorney fees to be paid out of the amounts awarded the dissenters who were benefited.

History: En. Sec. 146, Ch. 368, L. 1991.

Part 9
Dissolution and Liquidation

Part Cross-References

Cancellation of registration of assumed business name upon dissolution of domestic corporation, 30-13-214.

Dissolution and liquidation of nonprofit corporations, Title 35, ch. 2, part 7.

Involuntary corporate dissolution, Title 35, ch. 6.

Limited liability company dissolution, Title 35, ch. 8, part 9.

Dissolution and winding up of partnerships in general, Title 35, ch. 10, part 6.

Dissolution of limited partnerships, Title 35, ch. 12, part 12.

Sale or disposition of assets of cooperative associations, 35-15-506.

Sale or disposition of assets of cooperative agricultural marketing associations, 35-17-506.

Dissolution of rural cooperative utilities, 35-18-404, 35-18-405.

35-1-901 through 35-1-912. Repealed. Sec. 216, Ch. 368, L. 1991.

Compiler's Comments

Histories of Repealed Sections:

35-1-901. En. Sec. 75, Ch. 300, L. 1967; R.C.M. 1947, 15-2275; amd. Sec. 50, Ch. 475, L. 1981; amd. Sec. 22, Ch. 131, L. 1983; amd. Sec. 19, Ch. 174, L. 1983.

35-1-902. En. Sec. 76, Ch. 300, L. 1967; R.C.M. 1947, 15-2276; amd. Sec. 23, Ch. 131, L. 1983; amd. Sec. 20, Ch. 174, L. 1983.

35-1-903. En. Sec. 77, Ch. 300, L. 1967; R.C.M. 1947, 15-2277; amd. Sec. 24, Ch. 131, L. 1983; amd. Sec. 21, Ch. 174, L. 1983.

35-1-904. En. Sec. 78, Ch. 300, L. 1967; R.C.M. 1947, 15-2278; amd. Sec. 25, Ch. 131, L. 1983.

35-1-905. En. Sec. 79, Ch. 300, L. 1967; R.C.M. 1947, 15-2279.

35-1-906. En. Sec. 80, Ch. 300, L. 1967; R.C.M. 1947, 15-2280.

35-1-907. En. Sec. 81, Ch. 300, L. 1967; R.C.M. 1947, 15-2281; amd. Sec. 26, Ch. 131, L. 1983; amd. Sec. 22, Ch. 174, L. 1983.

35-1-908. En. Sec. 82, Ch. 300, L. 1967; R.C.M. 1947, 15-2282; amd. Sec. 27, Ch. 131, L. 1983; amd. Sec. 23, Ch. 174, L. 1983.

35-1-909. En. Sec. 83, Ch. 300, L. 1967; R.C.M. 1947, 15-2283; amd. Sec. 28, Ch. 131, L. 1983.

35-1-910. En. Sec. 84, Ch. 300, L. 1967; R.C.M. 1947, 15-2284.

35-1-911. En. Sec. 85, Ch. 300, L. 1967; amd. Sec. 2, Ch. 152, L. 1969; amd. Sec. 3, Ch. 391, L. 1973; R.C.M. 1947, 15-2285(part); amd. Sec. 29, Ch. 131, L. 1983; amd. Sec. 24, Ch. 174, L. 1983; amd. Sec. 4, Ch. 445, L. 1985.

35-1-912. En. Sec. 86, Ch. 300, L. 1967; R.C.M. 1947, 15-2286; amd. Sec. 30, Ch. 131, L. 1983.

35-1-913 through 35-1-920 reserved.

35-1-921 through 35-1-927. Repealed. Sec. 216, Ch. 368, L. 1991.

Compiler's Comments

Histories of Repealed Sections:

35-1-921. En. Sec. 90, Ch. 300, L. 1967; amd. Sec. 1, Ch. 174, L. 1969; amd. Sec. 7, Ch. 455, L. 1977; R.C.M. 1947, 15-2290.

35-1-922. En. Sec. 91, Ch. 300, L. 1967; R.C.M. 1947, 15-2291.

35-1-923. En. Sec. 92, Ch. 300, L. 1967; R.C.M. 1947, 15-2292.

35-1-924. En. Sec. 93, Ch. 300, L. 1967; R.C.M. 1947, 15-2293.

35-1-925. En. Sec. 94, Ch. 300, L. 1967; R.C.M. 1947, 15-2294.

35-1-926. En. Sec. 95, Ch. 300, L. 1967; amd. Sec. 2, Ch. 174, L. 1969; R.C.M. 1947, 15-2295.

35-1-927. En. Sec. 96, Ch. 300, L. 1967; R.C.M. 1947, 15-2296.

35-1-928. Renumbered 35-1-944. Sec. 221, Ch. 368, L. 1991.

35-1-929. Repealed. Sec. 216, Ch. 368, L. 1991.

History: En. Sec. 97, Ch. 300, L. 1967; R.C.M. 1947, 15-2297.

35-1-930. Repealed. Sec. 216, Ch. 368, L. 1991.

History: En. Sec. 98, Ch. 300, L. 1967; R.C.M. 1947, 15-2298.

35-1-931. Dissolution by incorporators or initial directors. A majority of the incorporators or initial directors of a corporation that has not issued shares or has not commenced business may dissolve the corporation by delivering to the secretary of state, for filing, articles of dissolution that set forth:

(1) the name of the corporation;

(2) the date of its incorporation;

(3) either that none of the corporation's shares have been issued or that the corporation has not commenced business;

(4) that any debt of the corporation does not remain unpaid;

(5) if shares were issued, that the net assets of the corporation remaining after winding up of the corporation's business and affairs have been distributed to the shareholders; and

(6) that a majority of the incorporators or initial directors authorized the dissolution.

History: En. Sec. 147, Ch. 368, L. 1991; amd. Sec. 9, Ch. 229, L. 1999.

Compiler's Comments

1999 Amendment: Chapter 229 at beginning of (5) substituted "if shares were issued" for "if issues were shared"; and made minor changes in style. Amendment effective April 2, 1999.

Cross-References

Appeal from Secretary of State's refusal to file articles of dissolution, 35-1-1310.

35-1-932. Dissolution by board of directors and shareholders. (1) A corporation's board of directors may propose dissolution for submission to the shareholders.

(2) For a proposal to dissolve to be adopted:

(a) the board of directors shall recommend dissolution to the shareholders unless the board of directors determines that because of conflict of interest or other special circumstances it should make no recommendation and communicates the basis for its determination to the shareholders; and

(b) the shareholders entitled to vote shall approve the proposal to dissolve as provided in subsection (5).

(3) The board of directors may condition its submission of the proposal for dissolution on any basis.

(4) The corporation shall notify each shareholder, whether or not entitled to vote, of the proposed shareholders' meeting in accordance with 35-1-520. The notice must also state that the purpose or one of the purposes of the meeting is to consider dissolving the corporation.

(5) Unless the articles of incorporation, or the board of directors acting pursuant to subsection (3), requires a greater vote or a vote by voting groups to be adopted, the proposal to dissolve must be approved by an affirmative vote of two-thirds, or a majority if authorized by subsection (6), of all the votes entitled to be cast on that proposal.

(6) A majority of votes cast by the shareholders is sufficient to constitute approval by the corporation if a statement to that effect is included in the articles of incorporation but only if:

(a) the statement is included in the articles of incorporation at the time the initial articles of incorporation were filed; or

(b) the statement is included in an amendment to the articles of incorporation approved by an affirmative vote of two-thirds of the votes entitled to be cast on the amendment pursuant to 35-1-227.

History: En. Sec. 148, Ch. 368, L. 1991.

Cross-References

Shareholders' right to dissent, 35-1-827.

35-1-933. Articles of dissolution. (1) (a) At any time after dissolution is authorized, the corporation may dissolve by delivering to the secretary of state, for filing, articles of dissolution setting forth:

(i) the name of the corporation;

(ii) the date dissolution was authorized;

(iii) if the dissolution was adopted by the board of directors without shareholder action, a statement to the effect that shareholder action was not required; and

(iv) if dissolution was approved by the shareholders:

(A) the number of votes entitled to be cast on the proposal to dissolve; and

(B) either the total number of votes cast for and against dissolution or the total number of undisputed votes cast for dissolution and a statement that the number cast for dissolution was sufficient for approval.

(b) If voting by voting groups is required, the information required by subsection (1)(a)(iv) must be separately provided for each voting group entitled to vote separately on the plan to dissolve.

(2) A corporation is dissolved upon the effective date of its articles of dissolution.

History: En. Sec. 149, Ch. 368, L. 1991; amd. Sec. 154, Ch. 42, L. 1997; amd. Sec. 10, Ch. 229, L. 1999.

Compiler's Comments

1999 Amendment: Chapter 229 inserted (1)(a)(iii) allowing corporation dissolution by delivery of articles to secretary of state if dissolution adopted by board includes statement that shareholder action is not required; and made minor changes in style. Amendment effective April 2, 1999.

35-1-934. Revocation of dissolution. (1) A corporation may revoke its dissolution within 120 days of the effective date of the articles of dissolution.

(2) Revocation of dissolution must be authorized in the same manner as the dissolution was authorized unless that authorization permitted revocation by action of the board of directors alone, in which event the board of directors may revoke the dissolution without shareholder action.

(3) After the revocation of dissolution is authorized, the corporation may revoke the dissolution by delivering to the secretary of state, for filing, articles of revocation of dissolution, together with a copy of its articles of dissolution, that set forth:

(a) the name of the corporation;

(b) the effective date of the dissolution that was revoked;

(c) the date that the revocation of dissolution was authorized;

(d) if the corporation's board of directors or incorporators revoked the dissolution, a statement to that effect;

(e) if the corporation's board of directors revoked a dissolution authorized by the shareholders, a statement that revocation was permitted on action by the board of directors alone pursuant to that authorization; and

(f) if shareholder action was required to revoke the dissolution, the information required by 35-1-933(1)(a)(iv) or (1)(b).

(4) Unless a delayed effective date is specified, revocation of dissolution is effective when the articles of revocation of dissolution are filed.

(5) When the revocation of dissolution is effective, it relates back to and takes effect as of the effective date of the dissolution and the corporation resumes carrying on its business as if dissolution had never occurred.

History: En. Sec. 150, Ch. 368, L. 1991; amd. Sec. 155, Ch. 42, L. 1997; amd. Sec. 11, Ch. 229, L. 1999.

Compiler's Comments

1999 Amendment: Chapter 229 in (3)(f) substituted "35-1-933(1)(a)(iv)" for "35-1-933(1)(a)(iii)"; and made minor changes in style. Amendment effective April 2, 1999.

35-1-935. Effect of dissolution. (1) A dissolved corporation continues its corporate existence but may not carry on any business except that appropriate to wind up and liquidate its business and affairs, including:

(a) collecting its assets;

(b) disposing of its properties that will not be distributed in kind to its shareholders;

(c) discharging or making provision for discharging its liabilities;

(d) distributing its remaining property among its shareholders according to their interests; and

(e) doing every other act necessary to wind up and liquidate its business and affairs.

(2) Dissolution of a corporation does not:

(a) transfer title to the corporation's property;

(b) prevent transfer of its shares or securities, although the authorization to dissolve may provide for closing the corporation's share transfer records;

(c) subject its directors or officers to standards of conduct different from those prescribed in part 4;

(d) change quorum or voting requirements for its board of directors or shareholders; change provisions for selection, resignation, or removal of its directors or officers, or both; or change provisions for amending its bylaws;

(e) prevent commencement of a proceeding by or against the corporation in its corporate name;

(f) abate or suspend a proceeding pending by or against the corporation on the effective date of dissolution;

(g) terminate the authority of the registered agent of the corporation; or

(h) discharge, abate, or forgive any tax liability of the corporation.

History: En. Sec. 151, Ch. 368, L. 1991; amd. Sec. 3, Ch. 69, L. 1999.

Compiler's Comments

1999 Amendment: Chapter 69 inserted (2)(h) relating to discharge, abatement, or forgiveness of tax liability; and made minor changes in style. Amendment effective March 15, 1999.

Cross-References

Cancellation of assumed name upon dissolution — withdrawal of foreign corporation's authority to transact business, 30-13-214.

35-1-936. Known claims against dissolved corporation. (1) A dissolved corporation may dispose of the known claims against it by following the procedure described in this section.

(2) The dissolved corporation shall notify its known claimants in writing of the dissolution at any time after the effective date of the dissolution. The written notice must:

(a) describe information that must be included in a claim;

(b) provide a mailing address where a claim may be sent;

(c) state the deadline, which may not be less than 120 days from the effective date of the written notice, by which the dissolved corporation must receive the claim; and

(d) state that the claim will be barred if not received by the deadline.

(3) A claim against the dissolved corporation is barred:

(a) if a claimant who was given written notice under subsection (1) does not deliver the claim to the dissolved corporation by the deadline; or

(b) if a claimant whose claim was rejected by the dissolved corporation does not commence a proceeding to enforce the claim within 90 days from the effective date of the rejection notice.

(4) For purposes of this section, "claim" does not include a contingent liability or a claim based on an event occurring after the effective date of the dissolution.

History: En. Sec. 152, Ch. 368, L. 1991.

35-1-937. Unknown claims against dissolved corporation. (1) Subject to 35-1-936, the dissolution of a corporation, including by the expiration of its term, does not take away or impair any remedy available to or against the corporation or its officers, directors, or shareholders for any claim or right, whether or not the claim or right existed or accrued prior to dissolution. A proceeding by or against the corporation may be prosecuted or defended by the corporation in its corporate name. The shareholders, directors, and officers have power to take corporate or other action as appropriate to protect the remedy, right, or claim.

(2) A claim may be enforced under 35-1-936 or this section:

(a) against the dissolved corporation, to the extent of the undistributed assets; or

(b) if the assets have been distributed in liquidation, against a shareholder of the dissolved corporation to the extent of the shareholder's pro rata share of the claim or the corporate assets distributed to the shareholder in liquidation, whichever is less, but a shareholder's total liability for all claims under this section may not exceed the total amount of assets distributed to the shareholder.

(3) Subsections (1) and (2) apply to foreign corporations and their shareholders transacting business in this state for any claims otherwise arising or accruing under Montana law.

History: En. Sec. 153, Ch. 368, L. 1991; amd. Sec. 3, Ch. 249, L. 1993.

35-1-938. Grounds for judicial dissolution. The district court may dissolve a corporation:

(1) in a proceeding by the attorney general if it is established that:

(a) the corporation obtained its articles of incorporation through fraud; or

(b) the corporation has continued to exceed or abuse the authority conferred upon it by law;

(2) in a proceeding by a shareholder if it is established that:

(a) the directors are deadlocked in the management of the corporate affairs, the shareholders are unable to break the deadlock, and irreparable injury to the corporation is threatened or being suffered or the business and affairs of the corporation can no longer be conducted to the advantage of the shareholders generally because of the deadlock;

(b) the directors or those in control of the corporation have acted, are acting, or will act in a manner that is illegal, oppressive, or fraudulent;

(c) the shareholders are deadlocked in voting power and have failed, for a period that includes at least two consecutive annual meeting dates, to elect successors to directors whose terms have expired; or

(d) the corporate assets are being misapplied or wasted;

(3) in a proceeding by a creditor if it is established that:

(a) the creditor's claim has been reduced to judgment, the execution on the judgment has been returned unsatisfied, and the corporation is insolvent; or

(b) the corporation has admitted in writing that the creditor's claim is due and owing and the corporation is insolvent; or

(4) in a proceeding by the corporation to have its voluntary dissolution continued under court supervision.

History: En. Sec. 154, Ch. 368, L. 1991.

Cross-References

Appointment of receivers upon dissolution of corporation, 27-20-103.

Quo warranto proceedings, Title 27, ch. 28.

Judgment dissolving corporation, 27-28-502.

Vacating, annulling, or suspending corporate charter for unfair trade practices, 30-14-134.

Defense of ultra vires, 35-1-117.

Derivative proceeding — payment of expenses, 35-1-547.

Involuntary dissolution — procedure, 35-6-104.

35-1-939. Discretion of court to grant relief other than dissolution. (1) In any action filed by a shareholder or director to dissolve the corporation on the grounds enumerated in 35-1-938, the court may make any order to grant the relief other than dissolution as, in its discretion, it considers appropriate, including, without limitation, an order:

(a) canceling or altering any provision contained in the articles of incorporation, in any amendment of the articles of incorporation, or in the bylaws of the corporation;

(b) canceling, altering, or enjoining any resolution or other act of the corporation;

(c) directing or prohibiting any act of the corporation or of shareholders, directors, officers, or other persons party to the action; or

(d) providing for the purchase at fair value of shares of any shareholder, either by the corporation or by other shareholders.

(2) Relief under subsection (1) may be granted as an alternative to a decree of dissolution or may be granted whenever, under the circumstances of the case, relief but not dissolution would be appropriate.

History: En. Sec. 155, Ch. 368, L. 1991.

35-1-940. Procedure for judicial dissolution. (1) Venue for a proceeding by the attorney general or any other party named in 35-1-938 to dissolve a corporation lies in the county where a corporation's principal office or, if its principal office is not located in this state, where its registered office is or was last located.

(2) It is not necessary to make shareholders parties to a proceeding to dissolve a corporation unless relief is sought against them individually.

(3) A court in a proceeding brought to dissolve a corporation may issue injunctions, appoint a receiver or custodian pendente lite with all powers and duties the court directs, take other action required to preserve the corporate assets wherever located, and carry on the business of the corporation until a full hearing can be held.

History: En. Sec. 156, Ch. 368, L. 1991.

Cross-References

Receivers, Title 27, ch. 20.

Quo warranto proceedings, Title 27, ch. 28.

Suretyship, Title 28, ch. 11, part 4.

35-1-941. Receivership or custodianship. (1) A court in a judicial proceeding brought to dissolve a corporation may appoint one or more receivers to wind up and liquidate, or one or more custodians to manage, the business and affairs of the corporation. The court shall hold a hearing, after notifying all parties to the proceeding and any interested persons designated by the court, before appointing a receiver or custodian. The court appointing a receiver or custodian has exclusive jurisdiction over the corporation and all its property wherever located.

(2) The court may appoint an individual or a domestic or foreign corporation, authorized to transact business in this state, as a receiver or custodian. The court may require the receiver or custodian to post bond, with or without sureties, in an amount the court directs.

(3) The court shall describe the powers and duties of the receiver or custodian in its appointing order, which may be amended from time to time. Among other powers:

(a) the receiver may dispose of all or any part of the assets of the corporation wherever located, at a public or private sale, if authorized by the court and may sue and defend in the receiver's own name as receiver of the corporation in all courts of this state; and

(b) the custodian may exercise all of the powers of the corporation through or in place of its board of directors or officers to the extent necessary to manage the affairs of the corporation in the best interests of its shareholders and creditors.

(4) The court during a receivership may redesignate the receiver a custodian and during a custodianship may redesignate the custodian a receiver if doing so is in the best interests of the corporation and its shareholders and creditors.

(5) The court from time to time during the receivership or custodianship may order compensation paid and expense disbursements or reimbursements made to the receiver or custodian and his counsel from the assets of the corporation or proceeds from the sale of the assets.

History: En. Sec. 157, Ch. 368, L. 1991.

35-1-942. Decree of dissolution. (1) If after a hearing the court determines that one or more grounds for judicial dissolution described in 35-1-938 exist, it may enter a decree dissolving the corporation and specifying the effective date of the dissolution, and the clerk of the court shall deliver a certified copy of the decree to the secretary of state, who shall file it.

(2) After entering the decree of dissolution, the court shall direct the winding up and liquidation of the corporation's business and affairs in accordance with 35-1-935 and the notification of claimants in accordance with 35-1-936 and 35-1-937.

History: En. Sec. 158, Ch. 368, L. 1991.

Cross-References

Receivers, Title 27, ch. 20.

Quo warranto proceedings, Title 27, ch. 28.

35-1-943. Deposit with state treasurer. Assets of a dissolved corporation that should be transferred to a creditor, claimant, or shareholder of the corporation who cannot be found or who is not competent to receive them must be reduced to cash and deposited with the state treasurer or other appropriate state official for safekeeping. When the creditor, claimant, or shareholder furnishes satisfactory proof of entitlement to the amount deposited, the state treasurer or other appropriate state official shall pay him or his representative that amount.

History: En. Sec. 159, Ch. 368, L. 1991.

35-1-944. State dissolution or withdrawal certificate. A decree of voluntary dissolution may not be made and entered by a court, nor shall the clerk of the district court of a county or secretary of state file a voluntary dissolution decree or file any other document by which the term of existence of a corporation is terminated, except a decree of involuntary dissolution in an action brought by the secretary of state. The secretary of state may not file an application for a certificate of withdrawal by a foreign corporation of its right to do intrastate business in the state unless the corporation obtains from the department of revenue and files with the court, clerk of the district court, or secretary of state, as part of the original instrument effecting the dissolution or withdrawal, a dissolution or withdrawal certificate issued pursuant to 15-31-552(1) verifying that the corporation has filed all applicable returns and has paid all taxes owing the state up to the date of the request for dissolution or withdrawal. The issuance of the dissolution or withdrawal certificate or tax clearance certificate does not relieve the corporation from liability for taxes, penalties, or interest due the state of Montana including taxes, penalties, or interest incurred after the date of dissolution.

History: En. Sec. 85, Ch. 300, L. 1967; amd. Sec. 2, Ch. 152, L. 1969; amd. Sec. 3, Ch. 391, L. 1973; R.C.M. 1947, 15-2285(part); amd. Sec. 2, Ch. 202, L. 1979; amd. Sec. 152, Ch. 575, L. 1981; amd. Sec. 5, Ch. 445, L. 1985; Sec. 35-1-928, MCA 1989; redes. 35-1-944 by Sec. 221, Ch. 368, L. 1991; amd. Sec. 4, Ch. 69, L. 1999.

Compiler's Comments

1999 Amendment: Chapter 69 at end of second sentence substituted "a dissolution or withdrawal certificate issued pursuant to 15-31-552(1) verifying that the corporation has filed all applicable returns and has paid all taxes owing the state up to the date of the request for dissolution or withdrawal" for "a certificate to the effect the department of revenue is satisfied from the available evidence that all taxes imposed by Title 15 have been paid"; in third sentence at beginning substituted "the dissolution or withdrawal certificate or tax clearance certificate" for "the certificate" and at end inserted "including taxes, penalties, or interest incurred after the date of dissolution"; and made minor changes in style. Amendment effective March 15, 1999.

Cross-References

Withdrawal of foreign corporation, 35-1-1037.

Part 10
Foreign Corporations

35-1-1001 through 35-1-1013. Repealed. Sec. 216, Ch. 368, L. 1991.

Compiler's Comments

Histories of Repealed Sections:

35-1-1001. En. Sec. 99, Ch. 300, L. 1967; amd. Sec. 2, Ch. 66, L. 1977; R.C.M. 1947, 15-2299(1).

35-1-1002. En. Sec. 99, Ch. 300, L. 1967; amd. Sec. 2, Ch. 66, L. 1977; R.C.M. 1947, 15-2299(2); amd. Sec. 51, Ch. 475, L. 1981.

35-1-1003. En. Sec. 116, Ch. 300, L. 1967; R.C.M. 1947, 15-22-116.

35-1-1004. En. Sec. 117, Ch. 300, L. 1967; R.C.M. 1947, 15-22-117; amd. Sec. 1, Ch. 583, L. 1983.

35-1-1005. En. Sec. 100, Ch. 300, L. 1967; R.C.M. 1947, 15-22-100.

35-1-1006. En. Sec. 101, Ch. 300, L. 1967; R.C.M. 1947, 15-22-101; amd. Sec. 52, Ch. 475, L. 1981; amd. Sec. 4, Ch. 456, L. 1983.

35-1-1007. En. Sec. 102, Ch. 300, L. 1967; R.C.M. 1947, 15-22-102; amd. Sec. 53, Ch. 475, L. 1981.

35-1-1008. En. Sec. 103, Ch. 300, L. 1967; R.C.M. 1947, 15-22-103; amd. Sec. 54, Ch. 475, L. 1981; amd. Sec. 31, Ch. 131, L. 1983; amd. Sec. 25, Ch. 174, L. 1983.

35-1-1009. En. Sec. 104, Ch. 300, L. 1967; amd. Sec. 3, Ch. 152, L. 1969; R.C.M. 1947, 15-22-104; amd. Sec. 55, Ch. 475, L. 1981; amd. Sec. 32, Ch. 131, L. 1983.

35-1-1010. En. Sec. 105, Ch. 300, L. 1967; R.C.M. 1947, 15-22-105.

35-1-1011. En. Sec. 111, Ch. 300, L. 1967; R.C.M. 1947, 15-22-111; amd. Sec. 33, Ch. 131, L. 1983.

35-1-1012. En. Sec. 106, Ch. 300, L. 1967; R.C.M. 1947, 15-22-106.

35-1-1013. En. Sec. 107, Ch. 300, L. 1967; R.C.M. 1947, 15-22-107; amd. Sec. 34, Ch. 131, L. 1983; amd. Sec. 26, Ch. 174, L. 1983.

35-1-1014. Renumbered 35-1-1034. Sec. 221, Ch. 368, L. 1991.

35-1-1015 through 35-1-1020. Repealed. Sec. 216, Ch. 368, L. 1991.

Compiler's Comments

Histories of Repealed Sections:

35-1-1015. En. Sec. 109, Ch. 300, L. 1967; amd. Sec. 4, Ch. 152, L. 1969; R.C.M. 1947, 15-22-109; amd. Sec. 56, Ch. 475, L. 1981.

35-1-1016. En. Sec. 110, Ch. 300, L. 1967; amd. Sec. 5, Ch. 152, L. 1969; R.C.M. 1947, 15-22-110.

35-1-1017. En. Sec. 112, Ch. 300, L. 1967; amd. Sec. 4, Ch. 391, L. 1973; R.C.M. 1947, 15-22-112; amd. Sec. 3, Ch. 202, L. 1979; amd. Sec. 57, Ch. 475, L. 1981; amd. Sec. 27, Ch. 174, L. 1983.

35-1-1018. En. Sec. 113, Ch. 300, L. 1967; R.C.M. 1947, 15-22-113; amd. Sec. 35, Ch. 131, L. 1983.

35-1-1019. En. Sec. 114, Ch. 300, L. 1967; R.C.M. 1947, 15-22-114.

35-1-1020. En. Sec. 115, Ch. 300, L. 1967; R.C.M. 1947, 15-22-115; amd. Sec. 5, Ch. 456, L. 1983.

35-1-1021 through 35-1-1024 reserved.

35-1-1025. Repealed. Sec. 216, Ch. 368, L. 1991.

History: En. Sec. 4, Ch. 273, L. 1989.

35-1-1026. Authority to transact business required. (1) A foreign corporation may not transact business in this state until it obtains a certificate of authority from the secretary of state.

(2) The following activities, among others, do not constitute transacting business within the meaning of subsection (1):

(a) maintaining, defending, or settling any proceeding;

(b) holding meetings of the board of directors or shareholders or carrying on other activities concerning internal corporate affairs;

(c) maintaining bank accounts;

(d) maintaining offices or agencies for the transfer, exchange, and registration of the corporation's own securities or maintaining trustees or depositaries with respect to those securities;

(e) selling through independent contractors;

(f) soliciting or obtaining orders, whether by mail or through employees or agents or otherwise, if the orders require acceptance outside this state before they become contracts;

(g) creating or acquiring indebtedness, mortgages, and security interests in real or personal property;

(h) securing or collecting debts or enforcing mortgages and security interests in property securing the debts;

(i) owning real or personal property that is acquired incident to activities described in subsection (2)(h) if the property is disposed of within 5 years after the date of acquisition does not produce income, or is not used in the performance of a corporate function;

(j) conducting an isolated transaction that is completed within 30 days and that is not a transaction in the course of repeated transactions of a similar nature; or

(k) transacting business in interstate commerce.

(3) The list of activities in subsection (2) is not exhaustive.

(4) Except as provided in subsection (2), a foreign corporation is transacting business within the meaning of subsection (1) if it enters into a contract, including a contract entered into pursuant to Title 18, with the state of Montana, an agency of the state, or a political subdivision of the state and shall apply for and must receive a certificate of authority to transact business

before entering into the contract. The secretary of state shall provide written notice to the contracting parties regarding the requirement that a foreign corporation obtain a certificate of authority. The foreign corporation must be allowed 30 days from the date of the notice to obtain the certificate of authority, and an existing contract may not be voided prior to the expiration of the 30 days. This subsection does not apply to goods or services prepared out of state for delivery or use in this state.

History: En. Sec. 160, Ch. 368, L. 1991; amd. Sec. 1, Ch. 363, L. 1999.

Compiler's Comments

1999 Amendment: Chapter 363 inserted (4) providing that, except for goods or services prepared out of state for delivery or use in this state, a foreign corporation transacts business when it enters into a contract with the state or one of its political subdivisions and needs a certificate of authority to transact business, requiring the secretary of state to so notify the contracting parties, giving the foreign corporation 30 days from the date of the notice to obtain a certificate, and prohibiting the voiding of an existing contract prior to the expiration of the 30 days. Amendment effective April 20, 1999.

Retroactive Applicability: Section 7, Ch. 363, L. 1999, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to contracts entered into on or subsequent to January 1, 1999."

Cross-References

U.C.C. — investment securities, Title 30, ch. 8.

Securities Act of Montana, Title 30, ch. 10.

Classification of business trusts as foreign, 35-5-102.

35-1-1027. Consequences of transacting business without authority. (1) A foreign corporation transacting business in this state without a certificate of authority may not maintain a proceeding in any court in this state until it obtains a certificate of authority.

(2) The successor to a foreign corporation that transacted business in this state without a certificate of authority and the assignee of a cause of action arising out of that business may not maintain a proceeding based on that cause of action in any court in this state until the foreign corporation or its successor obtains a certificate of authority.

(3) A court may stay a proceeding commenced by a foreign corporation or its successor or assignee until it determines whether the foreign corporation or its successor or assignee requires a certificate of authority. If it determines that a certificate is required, the court may further stay the proceeding until the foreign corporation or its successor obtains the certificate.

(4) A foreign corporation is liable for a civil penalty of $5 for each day but not to exceed a total of $1,000 for each year that it transacts business in this state without a certificate of authority. The attorney general may collect all penalties due under this subsection.

(5) Notwithstanding the provisions of subsections (1) and (2), the failure of a foreign corporation to obtain a certificate of authority does not impair the validity of its corporate acts or prevent it from defending any proceeding in this state.

(6) A contract between the state of Montana, an agency of the state, or a political subdivision of the state and a foreign corporation that has failed to obtain a certificate of authority, as required under 35-1-1026, is voidable by the state, the contracting state agency, or the contracting political subdivision.

History: En. Sec. 161, Ch. 368, L. 1991; amd. Sec. 2, Ch. 363, L. 1999.

Compiler's Comments

1999 Amendment: Chapter 363 inserted (6) providing that a contract between a foreign corporation and the state or a political subdivision of the state is voidable by the state or political subdivision if the foreign corporation failed to obtain a certificate of authority as required under 35-1-1026. Amendment effective April 20, 1999.

Retroactive Applicability: Section 7, Ch. 363, L. 1999, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to contracts entered into on or subsequent to January 1, 1999."

35-1-1028. Application for certificate of authority. (1) A foreign corporation may apply for a certificate of authority to transact business in this state by delivering an application to the secretary of state for filing. The application must set forth:

(a) the name of the foreign corporation or, if its name is unavailable for use in this state, a corporate name that satisfies the requirements of 35-1-1031;

(b) the name of the state or country under whose law it is incorporated;

(c) its date of incorporation and period of duration;

(d) the street address of its principal office;

(e) the address of its registered office in this state and the name of its registered agent at that office;

(f) the names and usual business addresses of its current directors and officers; and

(g) the purpose or purposes of the corporation that it proposes to pursue in the transaction of business in this state.

(2) The foreign corporation shall deliver with the completed application a certificate of existence or a similar document authenticated by the secretary of state or other official having custody of corporate records in the state or country under whose law the foreign corporation is incorporated.

History: En. Sec. 162, Ch. 368, L. 1991.

35-1-1029. Amended certificate of authority. (1) A foreign corporation authorized to transact business in this state shall obtain an amended certificate of authority from the secretary of state if it changes:

(a) its corporate name;

(b) the period of its duration; or

(c) the state or country of its incorporation.

(2) The requirements of 35-1-1028 for obtaining an original certificate of authority apply to obtaining an amended certificate under this section.

History: En. Sec. 163, Ch. 368, L. 1991.

35-1-1030. Effect of certificate of authority. (1) A certificate of authority authorizes the foreign corporation to which it is issued the right to transact business in this state subject, however, to the right of the state to revoke the certificate as provided in this chapter.

(2) A foreign corporation with a valid certificate of authority has the same but no greater rights and has the same but no greater privileges as a domestic corporation of similar character and except as otherwise provided by this chapter is subject to the same duties, restrictions, penalties, and liabilities now or later imposed on a domestic corporation of similar character.

(3) This chapter does not authorize this state to regulate the organization or internal affairs of a foreign corporation authorized to transact business in this state.

History: En. Sec. 164, Ch. 368, L. 1991.

Cross-References

Appeal from Secretary of State's refusal to file articles of incorporation, 35-1-1310.

35-1-1031. Corporate name of foreign corporation. (1) If the corporate name of a foreign corporation does not satisfy the requirements of 35-1-308, to obtain or maintain a certificate of authority to transact business in this state the foreign corporation shall:

(a) add the word "corporation", "incorporated", "company", or "limited" or the abbreviation "corp.", "inc.", "co.", or "ltd." to its corporate name for use in this state; or

(b) use a fictitious name to transact business in this state if its real name is unavailable and deliver to the secretary of state, for filing, a copy of the resolution of its board of directors, certified by its secretary, adopting the fictitious name.

(2) Except as authorized by subsections (3) and (4), the corporate name of a foreign corporation, including a fictitious name, must be distinguishable in the records of the secretary of state from:

(a) the corporate name of a corporation incorporated or authorized to transact business in this state;

(b) a corporate name reserved or registered under 35-1-309 or 35-1-311;

(c) the fictitious name of another foreign corporation authorized to transact business in this state;

(d) the corporate name of a not-for-profit corporation incorporated or authorized to transact business in this state;

(e) the corporate name of a domestic corporation that has dissolved, but only for a period of 120 days after the effective date of its dissolution; and

(f) any assumed business name, limited partnership name, limited liability company name, trademark, or service mark registered or reserved with the secretary of state.

(3) A foreign corporation may apply to the secretary of state for authorization to use in this state the name of another corporation, incorporated or authorized to transact business in this state, that is not distinguishable in the secretary of state's records from the name applied for. The secretary of state shall authorize use of the name applied for if:

(a) the other corporation consents to the use in writing and submits an undertaking in a form satisfactory to the secretary of state to change its name to a name that is distinguishable in the records of the secretary of state from the name of the applying corporation; or

(b) the applicant delivers to the secretary of state a certified copy of a final judgment of a court of competent jurisdiction establishing the applicant's right to use the name applied for in this state.

(4) A foreign corporation may use in this state the name of another domestic or foreign corporation, including the fictitious name, that is used in this state if the other corporation is incorporated or authorized to transact business in this state and the foreign corporation:

(a) has merged with the other corporation;

(b) has been formed by reorganization of the other corporation; or

(c) has acquired all or substantially all of the assets, including the corporate name, of the other corporation.

(5) If a foreign corporation authorized to transact business in this state changes its corporate name to one that does not satisfy the requirements of 35-1-308, it may not transact business in this state under the changed name

until it adopts a name satisfying the requirements of 35-1-308 and obtains an amended certificate of authority under 35-1-1029.

History: En. Sec. 165, Ch. 368, L. 1991; amd. Sec. 84, Ch. 120, L. 1993.

Cross-References

Assumed business names, Title 30, ch. 13, part 2.

Exclusivity of corporate name, 30-13-202.

Registration of assumed business name by foreign corporation or foreign limited partnership — when prohibited, 30-13-205.

Trademarks and service marks, Title 30, ch. 13, part 3.

Business corporation — corporate name, Title 35, ch. 1, part 3.

Nonprofit corporation — corporate name, 35-2-305.

Foreign nonprofit corporation — corporate name, 35-2-826.

Business trust name, 35-5-201.

Acquisition of new name by dissolved corporation upon reinstatement, 35-6-203.

Restrictions on limited partnership names, 35-12-505.

35-1-1032. Registered office and registered agent of foreign corporation. (1) Each foreign corporation authorized to transact business in this state shall continuously maintain in this state:

(a) a registered office that may be the same as any of its places of business; and

(b) a registered agent who may be:

(i) an individual who resides in this state and whose business office is identical with the registered office;

(ii) a domestic corporation or not-for-profit domestic corporation whose business office is identical with the registered office; or

(iii) a foreign corporation or foreign not-for-profit corporation authorized to transact business in this state whose business office is identical with the registered office.

(2) Unless the registered agent signed the document making the appointment, the appointment of a registered agent or a successor registered agent on whom process may be served is not effective until the agent delivers a statement in writing to the secretary of state accepting the appointment.

History: En. Sec. 166, Ch. 368, L. 1991; amd. Sec. 12, Ch. 229, L. 1999.

Compiler's Comments

1999 Amendment: Chapter 229 inserted (2) regarding effectiveness of appointment of registered agent; and made minor changes in style. Amendment effective April 2, 1999.

35-1-1033. Change of registered office or registered agent of foreign corporation. (1) A foreign corporation authorized to transact business in this state may change its registered office or registered agent by delivering to the secretary of state, for filing, a statement of change that sets forth:

(a) the foreign corporation's name;

(b) the street address of its current registered office;

(c) if the current registered office is to be changed, the street address of its new registered office;

(d) the name of its current registered agent;

(e) if the current registered agent is to be changed, the name of its new registered agent and the new agent's written consent, either on the statement or attached to it, to the appointment; and

(f) the fact that after the change or changes are made, the street addresses of its registered office and the business office of its registered agent will be identical.

(2) If a registered agent changes the street address of the registered agent's business office, the registered agent may change the street address of the registered office of any foreign corporation for which the registered agent is the registered agent by notifying the corporation in writing of the change and signing, either manually or in facsimile, and delivering to the secretary of state, for filing, a statement of change that complies with the requirements of subsection (1) and that states that the corporation has been notified of the change.

History: En. Sec. 167, Ch. 368, L. 1991.

Cross-References

Change of registered office or registered agent, 35-1-314.

35-1-1034. Service of process on foreign corporation. Service of process upon a foreign corporation shall be effected upon the persons and in the manner provided by the Montana Rules of Civil Procedure.

History: En. Sec. 108, Ch. 300, L. 1967; R.C.M. 1947, 15-22-108; Sec. 35-1-1014, MCA 1989; redes. 35-1-1034 by Sec. 221, Ch. 368, L. 1991.

Cross-References

Venue for tort actions, 25-2-122.

Service of process, Rule 4D, M.R.Civ.P. (see Title 25, ch. 20).

35-1-1035 reserved.

35-1-1036. Resignation of registered agent of foreign corporation. (1) The registered agent of a foreign corporation may resign the agency appointment by signing and delivering to the secretary of state for filing the original and two copies of a statement of resignation. The statement of resignation may include a statement that the registered office is also discontinued.

(2) After filing the statement, the secretary of state shall attach the filing receipt to one copy and mail the copy and receipt to the registered office if the office has not been discontinued. The secretary of state shall mail the other copy to the foreign corporation at its principal office address shown in its most recent annual report.

(3) The agency appointment is terminated, and the registered office discontinued if so provided, 31 days after the date on which the statement was filed.

History: En. Sec. 168, Ch. 368, L. 1991.

35-1-1037. Withdrawal of foreign corporation. (1) A foreign corporation authorized to transact business in this state may not withdraw from this state until it obtains a certificate of withdrawal from the secretary of state.

(2) A foreign corporation authorized to transact business in this state may apply for a certificate of withdrawal by delivering an application to the secretary of state for filing. The application must set forth:

(a) the name of the foreign corporation and the name of the state or country under whose law it is incorporated;

(b) that it is not transacting business in this state and that it surrenders its authority to transact business in this state;

(c) that it revokes the authority of its registered agent to accept service on its behalf and appoints the secretary of state as its agent for service of process in any proceeding based on a cause of action arising during the time it was authorized to transact business in this state;

(d) a mailing address to which the secretary of state may mail a copy of any process served on the secretary of state under subsection (3);

(e) a commitment to notify the secretary of state in the future of any change in its mailing address;

(f) that all taxes imposed on the corporation by Title 15 have been paid, supported by a certificate by the department of revenue to be attached to the application to the effect that the department is satisfied from the available evidence that all taxes imposed have been paid. The issuance of the certificate does not relieve the corporation from liability for any taxes, penalties, or interest due the state of Montana; and

(g) additional information as may be necessary or appropriate to enable the secretary of state to determine and assess any unpaid fees or taxes payable by the foreign corporation as prescribed by 35-1-1026 through 35-1-1034 and 35-1-1036 through 35-1-1040.

(3) After the withdrawal of the corporation is effective, service of process on the secretary of state under this section is service on the foreign corporation. Upon receipt of process, the secretary of state shall mail a copy of the process to the foreign corporation at the mailing address set forth under subsection (2).

History: En. Sec. 169, Ch. 368, L. 1991.

Cross-References

Tax clearance certificate required for withdrawal from state, 35-1-944.

35-1-1038. Grounds for revocation. The secretary of state may commence a proceeding under 35-1-1039 to revoke the certificate of authority of a foreign corporation authorized to transact business in this state if:

(1) the foreign corporation does not deliver its annual report to the secretary of state within 90 days after it is due;

(2) the foreign corporation does not pay within 90 days after they are due any franchise taxes or penalties imposed by this chapter or other law;

(3) the foreign corporation is without a registered agent or registered office in this state for 90 days or more;

(4) the foreign corporation does not inform the secretary of state under 35-1-1033 or 35-1-1036 that its registered agent or registered office has changed, that its registered agent has resigned, or that its registered office has been discontinued within 60 days of the change, resignation, or discontinuance;

(5) an incorporator, director, officer, or agent of the foreign corporation signed a document the person knew was false in any material respect with the intent that the document be delivered to the secretary of state for filing; or

(6) the secretary of state receives a duly authenticated certificate from the secretary of state or other official having custody of corporate records in the state or country under whose law the foreign corporation is incorporated stating that it has been dissolved or disappeared as the result of a merger.

History: En. Sec. 170, Ch. 368, L. 1991.

Cross-References

Revoking authority of foreign corporation to transact business for unfair trade practices, 30-14-134.

35-1-1039. Procedure for and effect of revocation. (1) If the secretary of state determines that one or more grounds exist under 35-1-1038 for revocation of a certificate of authority, the secretary of state shall mail to the foreign corporation the written notice of the determination.

(2) If the foreign corporation does not correct each ground for revocation or demonstrate to the reasonable satisfaction of the secretary of state that each ground determined by the secretary of state does not exist within 60 days after the notice is mailed, the secretary of state may revoke the foreign corporation's certificate of authority by signing a certificate of revocation that states the ground or grounds for revocation and the effective date of the revocation. The secretary of state shall file the original of the certificate and mail a copy to the foreign corporation.

(3) The authority of a foreign corporation to transact business in this state ceases on the date shown on the certificate revoking its certificate of authority.

(4) The secretary of state's revocation of a foreign corporation's certificate of authority appoints the secretary of state as the foreign corporation's agent for service of process in any proceeding based on a cause of action that arose during the time the foreign corporation was authorized to transact business in this state. Service of process on the secretary of state under this subsection is service on the foreign corporation. Upon receipt of process, the secretary of state shall mail a copy of the process to the secretary of the foreign corporation at its principal office shown in its most recent annual report or in any subsequent communication received from the corporation stating the current mailing address of its principal office or, if a report or communication is not on file, in its application for a certificate of authority.

(5) Revocation of a foreign corporation's certificate of authority does not terminate the authority of the registered agent of the corporation.

History: En. Sec. 171, Ch. 368, L. 1991; amd. Sec. 4, Ch. 249, L. 1993.

35-1-1040. Appeal from revocation. (1) A foreign corporation may appeal the secretary of state's revocation of its certificate of authority to the district court within 30 days after service of the certificate of revocation is perfected pursuant to 35-1-1034. The foreign corporation appeals by petitioning the court to set aside the revocation and attaching to the petition copies of its certificate of authority and the secretary of state's certificate of revocation.

(2) The court may summarily order the secretary of state to reinstate the certificate of authority or may take any other action the court considers appropriate.

(3) The court's final decision may be appealed as in other civil proceedings.

History: En. Sec. 172, Ch. 368, L. 1991.

Part 11

Annual Report — Corporate Records

35-1-1101. Repealed. Sec. 216, Ch. 368, L. 1991.

History: En. Sec. 118, Ch. 300, L. 1967; R.C.M. 1947, 15-22-118; amd. Sec. 4, Ch. 202, L. 1979; amd. Sec. 58, Ch. 475, L. 1981; amd. Sec. 28, Ch. 174, L. 1983; amd. Sec. 1, Ch. 153, L. 1989.

35-1-1102. Repealed. Sec. 216, Ch. 368, L. 1991.

History: En. Sec. 119, Ch. 300, L. 1967; amd. Sec. 1, Ch. 6, L. 1971; R.C.M. 1947, 15-22-119.

35-1-1103. Repealed. Sec. 216, Ch. 368, L. 1991.

History: En. Sec. 125, Ch. 300, L. 1967; R.C.M. 1947, 15-22-125.

35-1-1104. Annual report for secretary of state. (1) Each domestic corporation and each foreign corporation authorized to transact business in this state shall deliver to the secretary of state, for filing, an annual report that sets forth:

(a) the name of the corporation and the state or country under whose law it is incorporated;

(b) the mailing address and, if different, street address of its registered office and the name of its registered agent at that office in this state;

(c) the address of its principal office;

(d) the names and business addresses of its directors and principal officers;

(e) a brief description of the nature of its business;

(f) the total number of authorized shares, itemized by class and series, if any, within each class; and

(g) the total number of issued and outstanding shares, itemized by class and series, if any, within each class.

(2) Information in the annual report must be current as of the date the annual report is executed on behalf of the corporation.

(3) The first annual report must be delivered to the secretary of state between January 1 and April 15 of the year following the calendar year in which a domestic corporation was incorporated or a foreign corporation was authorized to transact business. Subsequent annual reports must be delivered to the secretary of state between January 1 and April 15.

(4) If an annual report does not contain the information required by this section, the secretary of state shall promptly notify the reporting domestic or foreign corporation in writing and return the report to it for correction. If the report is corrected to contain the information required by this section and delivered to the secretary of state within 30 days after the effective date of notice, it is considered to be timely filed.

History: En. Sec. 179, Ch. 368, L. 1991; amd. Sec. 1, Ch. 139, L. 1997.

Cross-References

Filing fees, 35-1-1206.

Grounds for involuntary dissolution — failure to file, 35-6-102.

False financial statements — theft — deceptive practices, 45-6-301, 45-6-317.

35-1-1105 reserved.

35-1-1106. Corporate records. (1) A corporation shall keep as permanent records minutes of all meetings of its shareholders and board of directors, a record of all actions taken by the shareholders or board of directors without a meeting, and a record of all actions taken by a committee of the board of directors in place of the board of directors on behalf of the corporation.

(2) A corporation shall maintain appropriate accounting records.

(3) A corporation or its agent shall maintain a record of its shareholders, in a form that permits preparation of a list of the names and addresses of all shareholders, in alphabetical order by class of shares showing the number and class of shares held by each.

(4) A corporation shall maintain its records in written form or in another form capable of conversion into written form within a reasonable time.

(5) A corporation shall keep a copy of the following records at its principal office or a location from which the records may be recovered within 2 business days:

(a) its articles or restated articles of incorporation and all amendments to them currently in effect;

(b) its bylaws or restated bylaws and all amendments to them currently in effect;

(c) resolutions adopted by its board of directors creating one or more classes or series of shares and fixing their relative rights, preferences, and limitations if shares issued pursuant to those resolutions are outstanding;

(d) the minutes of all shareholders' meetings and records of all action taken by shareholders without a meeting for the past 3 years;

(e) the financial statements available to shareholders for the past 3 years under 35-1-1110;

(f) a list of the names and business addresses of its current directors and officers; and

(g) its most recent annual report delivered to the secretary of state under 35-1-1104.

History: **En. Sec. 173, Ch. 368, L. 1991.**

35-1-1107. Inspection of records by shareholders. (1) Subject to 35-1-1108(3), a shareholder of a corporation is entitled to inspect and copy, during regular business hours at the corporation's principal office, any of the records of the corporation described in 35-1-1106(5) if the shareholder gives the corporation written notice of the demand at least 5 business days before the date on which the shareholder wishes to inspect and copy.

(2) A shareholder of a corporation is entitled to inspect and copy, during regular business hours at a reasonable location specified by the corporation, any of the following records of the corporation if the shareholder meets the requirements of subsection (3) and gives the corporation written notice of the demand at least 5 business days before the date on which the shareholder wishes to inspect and copy:

(a) excerpts from minutes of any meeting of the board of directors, records of any action of a committee of the board of directors while acting in place of the board of directors on behalf of the corporation, minutes of any meeting of the shareholders, and records of action taken by the shareholders or board of directors without a meeting, to the extent not subject to inspection under subsection (1);

(b) accounting records of the corporation; and

(c) the record of shareholders.

(3) A shareholder may inspect and copy the records identified in subsection (2) only if:

(a) the demand is made in good faith and for a proper purpose;

(b) the shareholder describes with reasonable particularity the purpose and the records the shareholder desires to inspect;

(c) the records are directly connected with the shareholder's purpose; and

(d) the shareholder has been a shareholder of record for at least 6 months preceding the demand or the shareholder is a holder of record of at least 5% of all the outstanding shares of the corporation.

(4) The right of inspection granted by this section may not be abolished or limited by a corporation's articles of incorporation or bylaws.

(5) This section does not affect:

(a) the right of a shareholder to inspect records under 35-1-523 or, if the shareholder is in litigation with the corporation, to the same extent as any other litigant; or

(b) the power of a court, independently of this chapter, to compel the production of corporate records for examination.

(6) For purposes of this section, "shareholder" includes a beneficial owner whose shares are held in a voting trust or by a nominee on the shareholder's behalf.

History: En. Sec. 174, Ch. 368, L. 1991; amd. Sec. 156, Ch. 42, L. 1997.

35-1-1108. Scope of inspection right. (1) A shareholder's agent or attorney has the same inspection and copying rights as the shareholder the agent or attorney represents.

(2) The right to copy records under 35-1-1107 includes, if reasonable, the right to receive copies made by photographic, xerographic, or other means.

(3) The corporation may impose a reasonable charge, covering the costs of labor and material, for copies of documents provided to the shareholders. The charge may not exceed the estimated cost of production or reproduction of the records.

(4) The corporation may comply with a shareholder's demand to inspect the record of shareholders under 35-1-1107(2)(c) by providing the shareholder with a list of its shareholders that was compiled no earlier than the date of the shareholder's demand.

History: En. Sec. 175, Ch. 368, L. 1991.

35-1-1109. Court-ordered inspection. (1) If a corporation does not allow a shareholder who complies with 35-1-1107(1) to inspect and copy any records required by that subsection to be available for inspection, the district court of the county where the corporation's principal office or, if there is no principal office in this state, where its registered office is located may summarily order inspection and copying of the records demanded at the corporation's expense upon application of the shareholder.

(2) If a corporation does not within a reasonable time allow a shareholder to inspect and copy any other record, the shareholder who complies with 35-1-1107(2) and (3) may apply to the district court in the county where the corporation's principal office or, if there is no principal office in this state, where its registered office is located for an order to permit inspection and copying of the records demanded. The court shall dispose of an application under this subsection on an expedited basis.

(3) If the court orders inspection and copying of the records demanded, it shall also order the corporation to pay the shareholder's costs, including reasonable attorney fees, incurred to obtain the order unless the corporation proves that it refused inspection in good faith because it had a reasonable basis for doubt about the right of the shareholder to inspect the records demanded.

(4) If the court orders inspection and copying of the records demanded, it may impose reasonable restrictions on the use or distribution of the records by the demanding shareholder.

History: En. Sec. 176, Ch. 368, L. 1991.

35-1-1110. Financial statement for shareholders. Upon the written request of any shareholder of a corporation, the corporation shall mail to the shareholder its most recent financial statements showing in reasonable detail its assets and liabilities and the results of its operations.

History: En. Sec. 177, Ch. 368, L. 1991.

35-1-1111. Other reports to shareholders. (1) If a corporation indemnifies or advances expenses to a director under 35-1-442, 35-1-443, 35-1-444, or 35-1-445 in connection with a proceeding by or in the right of the corporation, the corporation shall report the indemnification or advance in writing to the shareholders with or before the notice of the next shareholders' meeting.

(2) If a corporation issues or authorizes the issuance of shares for promissory notes or for promises to render services in the future, the corporation shall report in writing to the shareholders the number of shares authorized or issued and the consideration received by the corporation with or before the notice of the next shareholders' meeting.

History: En. Sec. 178, Ch. 368, L. 1991.

Part 12
Fees and Charges

35-1-1201 through 35-1-1205. Repealed. Sec. 216, Ch. 368, L. 1991.

Compiler's Comments

Histories of Repealed Sections:

35-1-1201. En. Sec. 120, Ch. 300, L. 1967; R.C.M. 1947, 15-22-120; amd. Sec. 2, Ch. 156, L. 1987.

35-1-1202. En. Sec. 121, Ch. 300, L. 1967; amd. Sec. 6, Ch. 152, L. 1969; R.C.M. 1947, 15-22-121; amd. Sec. 59, Ch. 475, L. 1981.

35-1-1203. En. Sec. 122, Ch. 300, L. 1967; amd. Sec. 1, Ch. 185, L. 1971; R.C.M. 1947, 15-22-122.

35-1-1204. En. Sec. 123, Ch. 300, L. 1967; R.C.M. 1947, 15-22-123.

35-1-1205. En. Sec. 124, Ch. 300, L. 1967; R.C.M. 1947, 15-22-124; amd. Sec. 60, Ch. 475, L. 1981.

35-1-1206. Fees for filing, copying, and services. (1) The secretary of state shall establish by rule fees for filing documents and issuing certificates as required by this chapter.

(2) The secretary of state shall establish by rule fees for copying documents, priority handling, transmitting or filing facsimile copies, and providing computer-generated information.

(3) The fees prescribed under this section must be reasonably related to the costs of processing the documents and preparing and providing the services. The secretary of state shall maintain records sufficient to support the fees established under this section.

History: En. Sec. 7, Ch. 368, L. 1991.

Cross-References

Fees relating to nonprofit corporations, 35-2-1003.

Limited liability companies — fees, 35-8-211.

Fees relating to limited partnerships, 35-12-521.

35-1-1207. License fee. (1) In addition to the filing fee authorized by 35-1-1206, the secretary of state shall charge and collect from each domestic corporation a license fee based upon the number of shares that it will have authority to issue at the time of:

(a) filing its articles of incorporation;

(b) filing articles of amendment increasing the number of authorized shares; and

(c) filing articles of merger or consolidation increasing the number of authorized shares that the surviving or new corporation, if a domestic corporation, will have authority to issue above the aggregate number of shares that the constituent domestic corporations and constituent foreign corporations authorized to transact business in this state have authority to issue.

(2) The license fee for domestic corporations is as follows:

(a) 1 to 50,000 shares	$ 50
(b) 50,001 to 100,000 shares	100
(c) 100,001 to 250,000 shares	250
(d) 250,001 to 500,000 shares	400
(e) 500,001 to 1,000,000 shares	600
(f) over 1,000,000 shares	1,000

(3) If the domestic corporation is increasing the number of authorized shares either by amendment or by merger, the domestic corporation shall pay the difference in license fee between the fee based on the initial number of authorized shares and the amended number of shares.

(4) In addition to the filing fee authorized by 35-1-1206, the secretary of state shall charge and collect from each foreign corporation a license fee of $100 at the time of filing an application for a certificate of authority to transact business.

History: En. Sec. 8, Ch. 368, L. 1991; amd. Sec. 13, Ch. 229, L. 1999.

Compiler's Comments

1999 Amendment: Chapter 229 near end of (1) after "issue" deleted "or the increase in the number of shares that it will have authority to issue"; inserted (3) requiring domestic corporation to pay difference in license fee between authorized share fee and amended share number fee if number of shares is increased by amendment or merger; and made minor changes in style. Amendment effective April 2, 1999.

Part 13
Secretary of State

35-1-1301 through 35-1-1306. Repealed. Sec. 216, Ch. 368, L. 1991.

Compiler's Comments

Histories of Repealed Sections:

35-1-1301. En. Sec. 127, Ch. 300, L. 1967; R.C.M. 1947, 15-22-127.

35-1-1302. En. Sec. 128, Ch. 300, L. 1967; R.C.M. 1947, 15-22-128.

35-1-1303. En. Sec. 131, Ch. 300, L. 1967; R.C.M. 1947, 15-22-131.

35-1-1304. En. Sec. 129, Ch. 300, L. 1967; R.C.M. 1947, 15-22-129.

35-1-1305. En. Sec. 58, Ch. 300, L. 1967; R.C.M. 1947, 15-2258(part).

35-1-1306. En. Sec. 130, Ch. 300, L. 1967; R.C.M. 1947, 15-22-130.

35-1-1307. Secretary of state — powers — rulemaking. (1) The secretary of state has the power reasonably necessary to perform the duties required of the secretary of state by this chapter.

(2) The secretary of state may adopt rules to perform the duties required of the secretary of state under this chapter, including establishing necessary fees.

History: En. Sec. 15, Ch. 368, L. 1991.

35-1-1308. Forms. (1) The secretary of state may by rule prescribe and furnish on request forms or computer formats for:

(a) an application for a certificate of existence;

(b) a foreign corporation's application for a certificate of authority to transact business in this state;

(c) a foreign corporation's application for a certificate of withdrawal;

(d) the annual report; and

(e) other documents required or permitted to be filed by this chapter.

(2) If the secretary of state so requires, use of any of the forms or formats listed in subsection (1) is mandatory.

History: En. Sec. 6, Ch. 368, L. 1991.

35-1-1309. Filing duty of secretary of state. (1) If a document delivered to the office of the secretary of state for filing satisfies the requirements of 35-1-217 and 35-1-218, if applicable, the secretary of state shall file it.

(2) The secretary of state shall file a document by stamping or otherwise endorsing "Filed", together with the secretary of state's name, official title, and the date and time of receipt, on the original, the document copy, and the receipt for the filing fee. Except as provided in 35-1-315 and 35-1-1034, after filing a document, the secretary of state shall deliver the document copy to the domestic or foreign corporation or its representative, along with the filing fee receipt or acknowledgment of receipt if no fee is required.

(3) If the secretary of state refuses to file a document, the secretary of state shall return it to the domestic or foreign corporation or its representative within 10 days after the document was delivered, together with a brief written explanation of the reason for the refusal.

(4) The secretary of state's duty to file documents under this section is ministerial. The secretary of state's filing or refusing to file a document does not:

(a) affect the validity or invalidity of the document in whole or part;

(b) relate to the correctness or incorrectness of information contained in the document; or

(c) create a presumption that the document is valid or invalid or that information contained in the document is correct or incorrect.

History: En. Sec. 11, Ch. 368, L. 1991.

Cross-References

Authorization for electronic filing system, 2-15-404.

Articles of incorporation, 35-1-216.

Amendment of articles, 35-1-230.

Restated articles of incorporation, 35-1-231.

35-1-1310. Appeal from secretary of state's refusal to file document. (1) If the secretary of state refuses to file a document delivered to the secretary of state's office for filing, the domestic or foreign corporation may appeal the refusal to the district court for the first judicial district. The appeal is begun by petitioning the court to compel the filing of the document and by attaching to the petition the document and the secretary of state's explanation of his refusal to file.

(2) The court may summarily order the secretary of state to file the document or take other action the court considers appropriate.

(3) The court's final decision may be appealed as in other civil proceedings.

History: En. Sec. 12, Ch. 368, L. 1991.

Cross-References

Contested cases, Title 2, ch. 4, part 6.

Judicial review of contested cases, Title 2, ch. 4, part 7.

35-1-1311. Evidentiary effect of copy of filed document. A certificate attached to a copy of the document filed by the secretary of state, bearing the secretary of state's signature, which may be in facsimile, and the seal of this state, is conclusive evidence that the original document is on file with the secretary of state.

History: En. Sec. 13, Ch. 368, L. 1991.

Cross-References

Foreign nonprofit corporations — certified copies — evidentiary effect, 35-2-1111.

35-1-1312. Certificate of existence or authorization. (1) Anyone may apply to the secretary of state to furnish a certificate of existence for a domestic corporation or a certificate of authorization for a foreign corporation.

(2) A certificate of existence or authorization must set forth:

(a) the domestic corporation's corporate name or the foreign corporation's corporate name used in this state;

(b) (i) that the domestic corporation is incorporated under the law of this state, the date of its incorporation, and the period of its duration if less than perpetual; or

(ii) that the foreign corporation is authorized to transact business in this state;

(c) that all fees, taxes, and penalties owed to this state have been paid, if:

(i) payment is reflected in the records of the secretary of state and the department of revenue; and

(ii) nonpayment affects the existence or authorization of the domestic or foreign corporation;

(d) that its most recent annual report required by 35-1-1104 has been delivered to the secretary of state;

(e) that articles of dissolution have not been filed; and

(f) other facts of record in the office of the secretary of state that may be requested by the applicant.

(3) Subject to any qualification stated in the certificate, a certificate of existence or authorization issued by the secretary of state may be relied upon as conclusive evidence that the domestic or foreign corporation is in existence or is authorized to transact business in this state.

History: En. Sec. 14, Ch. 368, L. 1991.

CHAPTER 2

NONPROFIT CORPORATIONS

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35-2-1301. Standing.
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Chapter Cross-References

Tax-exempt property, Title 15, ch. 6, part 2.

Part 1
General

35-2-101. Renumbered 35-2-113. Sec. 175, Ch. 411, L. 1991.

35-2-102 through 35-2-112. Repealed. Sec. 174, Ch. 411, L. 1991.

Compiler's Comments

Histories of Repealed Sections:

35-2-102. En. Sec. 2, Ch. 198, L. 1967; R.C.M. 1947, 15-2302; amd. Sec. 3, Ch. 273, L. 1989.

35-2-103. En. Sec. 3, Ch. 198, L. 1967; R.C.M. 1947, 15-2303(part).

35-2-104. En. Sec. 96, Ch. 198, L. 1967; R.C.M. 1947, 15-2396.

35-2-105. En. Sec. 95, Ch. 198, L. 1967; R.C.M. 1947, 15-2395.

35-2-106. En. Sec. 4, Ch. 198, L. 1967; amd. Sec. 106, Ch. 349, L. 1974; amd. Sec. 24, Ch. 319, L. 1975; R.C.M. 1947, 15-2304.

35-2-107. En. Sec. 5, Ch. 198, L. 1967; R.C.M. 1947, 15-2305.

35-2-108. En. Sec. 26, Ch. 198, L. 1967; R.C.M. 1947, 15-2326.

35-2-109. En. Sec. 94, Ch. 198, L. 1967; R.C.M. 1947, 15-2394.

35-2-110. En. Sec. 6, Ch. 198, L. 1967; R.C.M. 1947, 15-2306; amd. Sec. 5, Ch. 202, L. 1979.

35-2-111. En. Sec. 92, Ch. 198, L. 1967; R.C.M. 1945, 15-2392.

35-2-112. En. 15-2398 by Sec. 2, Ch. 332, L. 1974; R.C.M. 1947, 15-2398.

35-2-113. Short title. This chapter shall be known and may be cited as the "Montana Nonprofit Corporation Act".

History: En. Sec. 1, Ch. 198, L. 1967; R.C.M. 1947, 15-2301; Sec. 35-2-101, MCA 1989; redes. 35-2-113 by Sec. 175, Ch. 411, L. 1991.

35-2-114. Definitions. As used in this chapter, the following definitions apply:

(1) "Approved by the members" means approved and ratified by the affirmative vote:

(a) of a majority of the votes represented and voting:

(i) at a meeting at which a quorum is present and the affirmative votes constitute a majority of the required quorum;

(ii) by a written ballot or written consent in conformity with this chapter; or

(iii) by the affirmative vote, written ballot, or written consent of the majority; and

(b) that includes the votes of all the members of any class, unit, or grouping that may be required by the articles, bylaws, or this chapter for any specified member action.

(2) "Articles of incorporation" or "articles" include amended and restated articles of incorporation and articles of merger.

(3) "Board" or "board of directors" means the board of directors except that a person or group of persons is not the board of directors because of powers delegated to that person or group pursuant to 35-2-414.

(4) "Bylaws" means the code, codes, or rules, other than the articles, adopted pursuant to this chapter for the regulation or management of the affairs of the corporation, regardless of the name or names by which the code, codes, or rules are designated.

(5) "Class" refers to a group of memberships that have the same rights with respect to voting, dissolution, redemption and transfer. For the purpose of this section, rights must be considered the same if they are determined by a formula applied uniformly.

(6) "Corporation" means a public benefit corporation, mutual benefit corporation, or religious corporation.

(7) "Delegates" means those persons elected or appointed to vote in a representative assembly for the election of a director or directors or on other matters.

(8) "Deliver" includes mail.

(9) "Directors" means individuals:

(a) designated in the articles or bylaws or elected by the incorporators and their successors; and

(b) elected or appointed by any other name or title to act as members of the board.

(10) "Distribution" means the payment of a dividend or any part of the income or profit of a corporation to its members, directors, or officers.

(11) "Domestic corporation" means a corporation.

(12) "Effective date of notice" has the meaning provided in 35-2-115(5).

(13) "Employee" does not include an officer or director who is not otherwise employed by the corporation.

(14) "Entity" includes:

(a) a corporation and foreign corporation;

(b) a business corporation and foreign business corporation;

(c) a profit and nonprofit unincorporated association;

(d) a corporation sole;

(e) a business trust, an estate, a partnership, a trust, and two or more persons having a joint or common economic interest; and

(f) a state, the United States, and a foreign government.

(15) "File", "filed", or "filing" means filed in the office of the secretary of state.

(16) "Foreign corporation" means a corporation that is organized under a law other than the law of this state and that would be a nonprofit corporation if formed under the laws of this state.

(17) "Governmental subdivision" includes an authority, county, district, and municipality.

(18) "Includes" denotes a partial definition.

(19) "Individual" includes the estate of an incompetent individual.

(20) "Means" denotes a complete definition.

(21) (a) "Member" means, without regard to what a person is called in the articles or bylaws, a person or persons who, on more than one occasion and pursuant to a provision of a corporation's articles or bylaws, have the right to vote for the election of a director or directors.

(b) A person is not a member by virtue of any of the following:

(i) any rights the person has as a delegate;

(ii) any rights the person has to designate a director or directors; or

(iii) any rights the person has as a director.

(22) "Membership" refers to the rights and obligations a member or members have pursuant to a corporation's articles, bylaws, and this chapter.

(23) "Mutual benefit corporation" means a domestic corporation designated as a mutual benefit corporation.

(24) "Notice" means that term as described in 35-2-115.

(25) "Person" includes any individual or entity.

(26) "Principal office" means the office, in the state or out of the state, that is designated in the annual report filed pursuant to 35-2-904 as the place where the principal office of a domestic or foreign corporation is located.

(27) "Proceeding" includes a civil suit and a criminal, administrative, and investigatory action.

(28) "Public benefit corporation" means a domestic corporation designated as a public benefit corporation.

(29) "Record date" means the date established under part 5 on which a corporation determines the identity of its members for the purposes of this chapter.

(30) "Religious corporation" means a domestic corporation designated as a religious corporation.

(31) "Secretary" means the corporate officer to whom the board of directors has delegated responsibility under 35-2-439(2) for custody of the minutes of the directors' and members' meetings and for authenticating the records of the corporation.

(32) "State", when referring to a part of the United States, includes:

(a) a state and commonwealth and their agencies and governmental subdivisions; and

(b) a territory and insular possession, their agencies, and governmental subdivisions of the United States.

(33) "United States" includes a district, an authority, a bureau, a commission, a department, and any other agency of the United States.

(34) "Vote" includes authorization by written ballot and written consent.

(35) (a) "Voting power" means the total number of votes entitled to be cast for the election of directors at the time the determination of voting power is made.

(b) The term excludes a vote that is contingent upon the happening of a condition or event that has not occurred at the time.

(c) When a class is entitled to vote as a class for directors, the determination of voting power of the class must be based on the percentage of the number of directors the class is entitled to elect out of the total number of authorized directors.

History: En. Sec. 1, Ch. 411, L. 1991.

35-2-115. Notice. (1) Notice under this chapter must be in writing unless oral notice is reasonable under the circumstances.

(2) (a) Notice may be communicated in person; by telephone, telegraph, teletype, facsimile, or other form of wire or wireless communication; or by mail or private carrier.

(b) If these forms of personal notice are impracticable, notice may be communicated by a newspaper of general circulation in the area where it is published or by radio, television, or other form of public broadcast communication.

(3) Written notice by a domestic or foreign corporation to its members, if in a comprehensible form, is effective when mailed if it is mailed postpaid and correctly addressed to the member's address shown in the corporation's current record of members.

(4) Written notice to a domestic or foreign corporation authorized to transact business in this state may be addressed to:

(a) its registered agent at its registered office; or

(b) the corporation or its secretary at its principal office shown in its most recent annual report or, in the case of a foreign corporation that has not yet delivered an annual report, in its application for a certificate of authority.

(5) Except as provided in subsections (3) and (4), written notice, if in a comprehensible form, is effective at the earliest of the following:

(a) when received;

(b) 5 days after its deposit in the United States mail, as evidenced by the postmark, if it is mailed postpaid and with correct postage; or

(c) on the date shown on the return receipt, if it is sent by certified mail, return receipt requested, and the receipt is signed by or on behalf of the addressee.

(6) Oral notice is effective when communicated if it is communicated in a comprehensible manner.

(7) If this chapter prescribes notice requirements for particular circumstances, those requirements govern. If the articles of incorporation or bylaws prescribe notice requirements that are consistent with this section or other provisions of this chapter, those requirements govern.

History: **En. Sec. 2, Ch. 411, L. 1991.**

35-2-116. Reservation of power to amend or repeal. The legislature has power to amend or repeal all or part of this chapter at any time, and all domestic and foreign corporations subject to this chapter are governed by the amendment or repeal.

History: **En. Sec. 3, Ch. 411, L. 1991.**

35-2-117. Purposes. (1) A corporation incorporated under this chapter has the purpose of engaging in any lawful activity unless a more limited purpose is set forth in the articles of incorporation.

(2) A corporation engaging in an activity that is subject to regulation under another statute of this state may incorporate under this chapter only if the incorporation under this chapter is not prohibited by the other statute. The corporation is subject to all limitations of the other statute.

History: **En. Sec. 28, Ch. 411, L. 1991.**

35-2-118. General powers. (1) Unless its articles of incorporation provide otherwise, a corporation has perpetual duration and succession in its corporate name and has the same powers as an individual to do all things necessary or convenient to carry out its affairs including, without limitation, power:

(a) to sue and be sued, complain, and defend in its corporate name;

(b) to have a corporate seal, which may be altered at will, and to use it or a facsimile of the seal by impressing, affixing, or in any other manner reproducing it;

(c) to make and amend bylaws, consistent with its articles of incorporation or with the laws of this state, for regulating and managing the affairs of the corporation;

(d) to purchase, receive, lease, or otherwise acquire and to own, hold, improve, use, and otherwise deal with real or personal property or any legal or equitable interest in property, wherever located;

(e) to sell, convey, mortgage, pledge, lease, exchange, and otherwise dispose of all or any part of its property;

(f) to purchase, receive, subscribe for, or otherwise acquire any other entity; to own, hold, vote, use, sell, mortgage, lend, pledge, or otherwise dispose of any other entity; and to deal in and with shares or other interests in or obligations of any other entity;

(g) to make contracts and guaranties; to incur liabilities; to borrow money; to issue notes, bonds, and other obligations; and to secure any of its obligations by mortgage or pledge of any of its property, franchises, or income;

(h) to lend money, invest and reinvest its funds, and receive and hold real and personal property as security for repayment, except as limited by 35-2-435;

(i) to be a promoter, partner, member, associate, or manager of any partnership, joint venture, trust, or other entity;

(j) to conduct its activities, locate offices, and exercise the powers granted by this chapter in the state or out of the state;

(k) to elect or appoint directors, officers, employees, and agents of the corporation; to define their duties; and to fix their compensation;

(l) to pay pensions and establish pension plans, pension trusts, and other benefit and incentive plans for any or all of its current or former directors, officers, employees, and agents;

(m) to make donations consistent with law for the public welfare or for charitable, religious, scientific, or educational purposes and for other purposes that further the corporate interest;

(n) to impose dues, assessments, admission, and transfer fees upon its members;

(o) to establish conditions for admission of members, admit members, and issue memberships;

(p) to carry on a business; or

(q) to do all things necessary or convenient consistent with law to further the activities and affairs of the corporation.

(2) A corporation may not have or issue shares of stock.

History: En. Sec. 29, Ch. 411, L. 1991.

Cross-References

Bylaws, 35-2-217, 35-2-218, 35-2-229, 35-2-230.

35-2-119. Filing requirements. All of the following requirements must be met before a document is entitled to be filed under this section by the secretary of state:

(1) A document that is required or permitted by this chapter to be filed in the office of the secretary of state must satisfy the requirements of this section and of any other section that adds to or varies these requirements.

(2) The document must contain the information required by this chapter. It may contain other information as well.

(3) The document must be typewritten or printed.

(4) The document must be in the English language. However, a corporate name need not be in English if it is written in English letters or Arabic or Roman numerals. The certificate of existence required of foreign corporations need not be in English if it is accompanied by a reasonably authenticated English translation.

(5) The document must be executed:

(a) by the presiding officer of its board of directors, its president, or another of its officers;

(b) if directors have not been selected or the corporation has not been formed, by an incorporator; or

(c) if the corporation is in the hands of a receiver, trustee, or other court-appointed fiduciary, by that fiduciary.

(6) The person executing the document shall sign it and state beneath or opposite the signature his name and the capacity in which the person signs. The document may but need not contain the corporate seal, an attestation by the secretary or an assistant secretary, or an acknowledgment, verification, or proof.

(7) The document must be in or on the prescribed form if the secretary of state has prescribed a mandatory form for a document under 35-2-1108.

(8) The document must be delivered to the office of the secretary of state for filing and must be accompanied by:

(a) one copy, except as provided in 35-2-311 and 35-2-829;

(b) the correct filing fee; and

(c) any franchise tax, license fee, or penalty required by this chapter, rules promulgated under this chapter, or other law.

History: En. Sec. 4, Ch. 411, L. 1991.

35-2-120. Facsimile filing. (1) The secretary of state shall treat a facsimile copy of a document that is required or permitted to be filed under 35-2-119, 35-2-121 through 35-2-123, 35-2-1003, 35-2-1108 through 35-2-1112, and this section and the signatures on the facsimile copy in the same manner as an original for purposes of 35-2-119, 35-2-121 through 35-2-123, 35-2-1003, 35-2-1108 through 35-2-1112, and this section. If all other requirements are met, the date of filing relates back to the date of receipt of the facsimile copy.

(2) A person who files a false document by facsimile copy is liable to an aggrieved party for three times the amount of damages resulting from the filing of the false document.

History: En. Sec. 5, Ch. 411, L. 1991; amd. Sec. 6, Ch. 290, L. 1997.

35-2-121. Effective date of document. (1) Except as provided in subsection (2), a document is effective:

(a) at the time of filing on the date it is filed, as evidenced by the secretary of state's endorsement on the original document; or

(b) at the time specified in the document as its effective time on the date it is filed.

(2) A document may specify a delayed effective time and date, and if it does so the document becomes effective at the time and date specified. If a delayed

effective date but no time is specified, the document is effective at the close of business on that date. A delayed effective date for a document may not be later than 90 days after the date it is filed.

History: En. Sec. 8, Ch. 411, L. 1991.

35-2-122. Correcting filed document. (1) A domestic or foreign corporation may correct a document filed by the secretary of state if the document:

(a) contains an incorrect statement; or

(b) was defectively executed, attested, sealed, verified, or acknowledged.

(2) A document is corrected:

(a) by preparing articles of correction that:

(i) describe the document, including its filing date, or have attached a copy of the document;

(ii) specify the incorrect statement and the reason it is incorrect or the manner in which the execution was defective; and

(iii) correct the incorrect statement or defective execution; and

(b) by delivering the articles of correction to the secretary of state.

(3) Articles of correction are effective on the effective date of the document they correct except as to persons relying on the uncorrected document and adversely affected by the correction. As to those persons, articles of correction are effective when filed.

History: En. Sec. 9, Ch. 411, L. 1991.

35-2-123. Penalty for signing false documents. (1) The execution of any document that must be filed with the secretary of state under 35-2-119 through 35-2-122, 35-2-1003, 35-2-1108 through 35-2-1112, and this section constitutes an affirmation, under the penalties of false swearing, by each person executing the document that the facts stated in the document are true.

(2) The secretary of state shall provide for the printing of a warning to this effect on each form prescribed by the secretary of state under this chapter.

History: En. Sec. 14, Ch. 411, L. 1991.

Cross-References

Penalty for false swearing, 45-7-202.

35-2-124 and 35-2-125 reserved.

35-2-126. Designation of status of nonprofit corporations. (1) A domestic corporation must be designated as either a public benefit, mutual benefit, or religious corporation. The specific designation of a corporation is as follows:

(a) A corporation designated by its articles of incorporation as a public benefit corporation, a mutual benefit corporation, or a religious corporation is the type of corporation designated by its articles of incorporation.

(b) A corporation that is not designated by its articles of incorporation as a public benefit corporation, a mutual benefit corporation, or religious corporation is the type of corporation designated in the annual report filed in 1995.

(2) A foreign corporation must be designated as either a foreign public benefit, foreign mutual benefit, or foreign religious corporation. The specific designation of a corporation is as follows:

(a) A foreign corporation designated by its articles of incorporation as a public benefit corporation, mutual benefit corporation, or religious corporation is the type of foreign corporation designated by its articles of incorporation.

(b) A foreign corporation not designated as provided in subsection (2)(a), but designated in its application for a certificate of authority, or any amendments of the application, as a public benefit corporation, mutual benefit corporation, or religious corporation is the type of foreign corporation it designated in its application for a certificate of authority.

(c) A foreign corporation not designated as provided in subsection (2)(a) or (2)(b) is the type of corporation it designated in the annual report filed in 1995.

History: En. Sec. 16, Ch. 411, L. 1991.

35-2-127. Private foundations. (1) Except as otherwise determined by a court of competent jurisdiction, a corporation that is a private foundation as defined in section 509(a) of the Internal Revenue Code of 1986:

(a) shall distribute amounts for each taxable year at a time and in a manner as not to subject the corporation to tax under section 4942 of the Internal Revenue Code;

(b) may not engage in any act of self-dealing as defined in section 4941(d) of the Internal Revenue Code;

(c) may not retain any excess business holdings as defined in section 4943(c) of the Internal Revenue Code;

(d) may not make any taxable investments or expenditures as provided in sections 4944 and 4945 of the Internal Revenue Code; and

(e) may not make any taxable expenditures as defined in section 4945(d) of the Internal Revenue Code.

(2) All references in this section to sections of the Internal Revenue Code are to sections of the Internal Revenue Code of 1986, as amended from time to time, or to corresponding provisions of subsequent internal revenue laws of the United States.

History: En. Sec. 17, Ch. 411, L. 1991.

Cross-References

Taxes on golf courses owned by nonprofit corporations, 15-6-134.

Tax-exempt property, Title 15, ch. 6, part 2.

Tax-exempt property categories, 15-6-201.

Exempt securities, 30-10-104.

35-2-128. Religious corporations — constitutional protections. If the religious doctrine governing the affairs of a religious corporation is inconsistent with the provisions of this chapter on the same subject, the religious doctrine controls to the extent required by the United States or the Montana constitution.

History: En. Sec. 20, Ch. 411, L. 1991.

Cross-References

Freedom of religion, Art. II, sec. 5, Mont. Const.

35-2-129 reserved.

35-2-130. Judicial relief. (1) If for any reason it is impractical or impossible for a corporation to call or conduct a meeting of its members, delegates, or directors or to otherwise obtain their consent, in the manner prescribed by its articles, bylaws, or this chapter, then upon petition of a director, officer, delegate, member, or the attorney general, the state district court for the judicial district in which the registered office is located may order that a meeting be called or that a written ballot or other form of obtaining the vote of members, delegates, or directors be authorized, in the manner the court finds fair and equitable under the circumstances.

(2) In an order issued pursuant to this section, the court shall provide for a method of notice reasonably designed to give actual notice to all persons who would be entitled to notice of a meeting held pursuant to the articles, bylaws, and this chapter, whether or not the method results in actual notice to all persons entitled to notice or conforms to the notice requirements that would otherwise apply. In a proceeding under this section, the court may determine who the members or directors are.

(3) The order issued pursuant to this section may dispense with any requirement relating to the holding of or voting at meetings or obtaining votes, including any requirement as to quorums or as to the number or percentage of votes needed for approval, that would otherwise be imposed by the articles, bylaws, or this chapter.

(4) Whenever practical, an order issued pursuant to this section must limit the subject matter of meetings or other forms of consent authorized to approve items, including amendments to the articles or bylaws, the resolution of which will or may enable the corporation to continue managing its affairs without further resort to this section. However, an order under this section may also authorize the obtaining of votes and approvals necessary for dissolution, merger, or sale of assets.

(5) A meeting or other method of obtaining the vote of members, delegates, or directors that is conducted pursuant to an order issued under this section and that complies with all the provisions of the order is for all purposes a valid meeting or vote, and has the same force and effect as if it complied with every requirement imposed by the articles, bylaws, and this chapter.

History: En. Sec. 18, Ch. 411, L. 1991.

35-2-131. Attorney general. (1) Notice must be given to the attorney general of the commencement of any proceeding that this chapter authorizes the attorney general to bring but that has been commenced by another person.

(2) Whenever a provision of this chapter requires that notice be given to the attorney general before or after commencing a proceeding or permits the attorney general to commence a proceeding if no proceeding has been commenced, the attorney general may take appropriate action including but not limited to seeking injunctive relief. If a proceeding has been commenced by a person other than the attorney general, the attorney general may intervene, as of right, in the proceeding.

History: En. Sec. 19, Ch. 411, L. 1991.

35-2-132. Ultra vires. (1) Except as provided in subsection (2), the validity of corporate action may not be challenged on the ground that the corporation lacks or lacked power to act.

(2) A corporation's power to act may be challenged in a proceeding against the corporation to enjoin an act when a third party has not acquired rights. The proceeding may be brought by the attorney general, by a director, or by a member or members in a derivative proceeding.

(3) (a) A corporation's power to act may be challenged in a proceeding against an incumbent or former director, officer, employee, or agent of the corporation.

(b) The proceeding may be brought:

(i) by a director;

(ii) by the corporation, directly, derivatively, or through a receiver, a trustee, or other legal representative; or

(iii) in the case of a public benefit corporation, by the attorney general.

History: En. Sec. 30, Ch. 411, L. 1991.

Cross-References

Power of court to dissolve corporation, 35-2-728.

Activities not to be considered transacting business, 35-2-820.

Transacting business without certificate of authority, 35-2-821.

35-2-133. Terminated. Sec. 181, Ch. 411, L. 1991.

History: En. Sec. 173, Ch. 411, L. 1991.

Part 2

Formation — Articles of Incorporation Bylaws — Amendments

Part Cross-References

Formation, articles of incorporation, and bylaws of business corporations, Title 35, ch. 1, part 2.

Formation of religious corporations sole, Title 35, ch. 3, part 2.

Organization of professional service corporations, Title 35, ch. 4, part 2.

Formation and operation of business trusts, Title 35, ch. 5, part 2.

Formation of limited partnerships, Title 35, ch. 12, part 6.

Formation of mining partnerships, Title 35, ch. 13, part 1.

Formation, articles of incorporation, and bylaws of cooperative associations, Title 35, ch. 15, part 2.

Formation of agricultural associations, Title 35, ch. 16, part 2.

Formation of cooperative agricultural marketing associations, Title 35, ch. 17, part 2.

Formation, articles, and bylaws of rural cooperative utilities, Title 35, ch. 18, part 2.

Formation of cemetery associations, Title 35, ch. 20, part 1.

35-2-201 through 35-2-211. Repealed. Sec. 174, Ch. 411, L. 1991.

Compiler's Comments

Histories of Repealed Sections:

35-2-201. En. Sec. 28, Ch. 198, L. 1967; R.C.M. 1947, 15-2328; amd. Sec. 36, Ch. 131, L. 1983.

35-2-202. En. Sec. 29, Ch. 198, L. 1967; R.C.M. 1947, 15-2329; amd. Sec. 1, Ch. 78, L. 1979; amd. Sec. 2, Ch. 559, L. 1987; amd. Sec. 193, Ch. 368, L. 1991.

35-2-203. En. Sec. 30, Ch. 198, L. 1967; R.C.M. 1947, 15-2330; amd. Sec. 37, Ch. 131, L. 1983.

35-2-204. En. Sec. 31, Ch. 198, L. 1967; R.C.M. 1947, 15-2331.

35-2-205. En. Sec. 32, Ch. 198, L. 1967; R.C.M. 1947, 15-2332.

35-2-206. En. Sec. 33, Ch. 198, L. 1967; R.C.M. 1947, 15-2333.

35-2-207. En. Sec. 34, Ch. 198, L. 1967; R.C.M. 1947, 15-2334.

35-2-208. En. Sec. 35, Ch. 198, L. 1967; R.C.M. 1947, 15-2335; amd. Sec. 38, Ch. 131, L. 1983.

35-2-209. En. Sec. 36, Ch. 198, L. 1967; R.C.M. 1947, 15-2336; amd. Sec. 39, Ch. 131, L. 1983.

35-2-210. En. Sec. 37, Ch. 198, L. 1967; R.C.M. 1947, 15-2337(part); amd. Sec. 2, Ch. 78, L. 1979; amd. Sec. 40, Ch. 131, L. 1983; amd. Sec. 6, Ch. 445, L. 1985.

35-2-211. En. Sec. 12, Ch. 198, L. 1967; R.C.M. 1947, 15-2312.

35-2-212. Incorporators. One or more persons may act as the incorporator or incorporators of a corporation by delivering articles of incorporation to the secretary of state for filing.

History: En. Sec. 21, Ch. 411, L. 1991.

Cross-References

Directors and officers, Title 35, ch. 2, part 4.

Fees, 35-2-1003.

35-2-213. Articles of incorporation. (1) The articles of incorporation must set forth:

(a) a corporate name for the corporation that satisfies the requirements of 35-2-305;

(b) a statement that:

(i) the corporation is a public benefit corporation;

(ii) the corporation is a mutual benefit corporation; or

(iii) the corporation is a religious corporation;

(c) (i) the street address of the corporation's initial registered office and, if different, the mailing address; and

(ii) the name of its initial registered agent at that office;

(d) the name and address of each incorporator;

(e) whether or not the corporation will have members; and

(f) provisions consistent with law regarding the distribution of assets on dissolution.

(2) The articles of incorporation may set forth:

(a) the purpose or purposes for which the corporation is organized, which may be, either alone or in combination with other purposes, the transaction of any lawful activity;

(b) the names and addresses of the individuals who are to serve as the initial directors;

(c) provisions consistent with law regarding:

(i) managing and regulating the affairs of the corporation;

(ii) defining, limiting, and regulating the powers of the corporation, its board of directors, its members, or any class of members; and

(iii) the characteristics, qualifications, rights, limitations, and obligations attaching to each or any class of members;

(d) any provision that under this chapter is required or permitted to be set forth in the bylaws; and

(e) provisions eliminating or limiting the personal liability of a director to the corporation or members of the corporation for monetary damages for breach of a director's duties to the corporation and its members, provided that the provision may not eliminate or limit the liability of a director:

(i) for a breach of the director's duty of loyalty to the corporation or its members;

(ii) for acts or omissions not in good faith or that involve intentional misconduct or a knowing violation of law;

(iii) for a transaction from which a director derived an improper personal economic benefit; or

(iv) under 35-2-418, 35-2-435, or 35-2-436.

(3) A provision referred to in subsection (2)(e) may not eliminate or limit the liability of a director for any act or omission occurring prior to the date when the provision becomes effective.

(4) Each incorporator and director named in the articles shall sign the articles.

(5) The articles of incorporation need not set forth any of the corporate powers enumerated in this chapter.

History: En. Sec. 22, Ch. 411, L. 1991.

Cross-References

Number, election, and term of directors, 35-2-415, 35-2-417, 35-2-419.

35-2-214. Incorporation. (1) Unless a delayed effective date is specified, the corporate existence begins when the articles of incorporation are filed by the secretary of state.

(2) The secretary of state's filing of the articles of incorporation is conclusive proof that the incorporators have satisfied all conditions precedent to incorporation except in a proceeding by the state to cancel or revoke the incorporation or involuntarily dissolve the corporation.

History: En. Sec. 23, Ch. 411, L. 1991.

Cross-References

Certificates as conclusive evidence, 35-2-1111.

35-2-215. Liability for preincorporation transactions. A person who purports to act as or on behalf of a corporation but who knows that there was no incorporation under this chapter is jointly and severally liable for all liabilities created while so acting.

History: En. Sec. 24, Ch. 411, L. 1991.

35-2-216. Organization of corporation. (1) After incorporation:

(a) if initial directors are named in the articles of incorporation, the initial directors shall hold an organizational meeting, at the call of a majority of the directors, to complete the organization of the corporation by appointing officers, adopting bylaws, and carrying on any other business brought before the meeting; or

(b) if initial directors are not named in the articles, the incorporator or incorporators shall hold an organizational meeting at the call of a majority of the incorporators:

(i) to elect directors and complete the organization of the corporation; or

(ii) to elect a board of directors who shall complete the organization of the corporation.

(2) Action required or permitted by this chapter to be taken by incorporators at an organizational meeting may be taken without a meeting if the action taken is evidenced by one or more written consents describing the action taken and signed by each incorporator.

(3) An organizational meeting may be held in the state or out of the state in accordance with 35-2-427.

History: En. Sec. 25, Ch. 411, L. 1991.

Cross-References

Directors' meetings, 35-2-427.

Meetings of members, 35-2-526, 35-2-527.

35-2-217. Bylaws. (1) The incorporators or board of directors of a corporation shall adopt bylaws for the corporation.

(2) The bylaws may contain any provision for regulating and managing the affairs of the corporation consistent with law or the articles of incorporation.

History: En. Sec. 26, Ch. 411, L. 1991.

35-2-218. Emergency bylaws and powers. (1) Unless the articles provide otherwise, the directors of a corporation may adopt, amend, or repeal bylaws to be effective only in an emergency as defined in subsection (4). The emergency bylaws, which are subject to amendment or repeal by the members, may provide special procedures necessary for managing the corporation during the emergency, including:

(a) how to call a meeting of the board;

(b) quorum requirements for the meeting; and

(c) designation of additional or substitute directors.

(2) All provisions of the regular bylaws consistent with the emergency bylaws remain in effect during the emergency. The emergency bylaws are not in effect after the emergency ends.

(3) Corporate action taken in good faith in accordance with the emergency bylaws:

(a) binds the corporation; and

(b) may not be used to impose liability on a corporate director, officer, employee, or agent.

(4) For purposes of this section, an emergency exists if a quorum of the corporation's directors cannot readily be assembled because of some catastrophic event.

History: En. Sec. 27, Ch. 411, L. 1991.

35-2-219 and 35-2-220 reserved.

35-2-221. Authority to amend. A corporation may amend its articles of incorporation at any time to add or change a provision that is required or permitted in the articles or to delete a provision not required in the articles. Whether a provision is required or permitted in the articles is determined as of the effective date of the amendment.

History: En. Sec. 110, Ch. 411, L. 1991.

35-2-222. Amendment by directors. (1) Unless the articles provide otherwise, a corporation's board of directors may adopt one or more amendments to the corporation's articles without member approval:

(a) to extend the duration of the corporation if it was incorporated at a time when limited duration was required by law;

(b) to delete the names and addresses of the initial directors;

(c) to delete the name and address of the initial registered agent or registered office if a statement of change is on file with the secretary of state;

(d) to change the corporate name by substituting the word "corporation", "incorporated", "company", "limited", or the abbreviation "corp.", "inc.", "co.", or "ltd." for a similar word or abbreviation in the name or by adding, deleting, or changing a geographical attribution to the name; or

(e) to make any other change expressly permitted by this chapter to be made by action of the board of directors.

(2) If a corporation has no members, its incorporators, until directors have been chosen, and later its board of directors may adopt one or more amendments to the corporation's articles subject to any approval required pursuant to 35-2-232. The corporation shall provide notice of any meeting at which an amendment is to be voted upon. The notice must be in accordance

with 35-2-429(3). The notice must also state that the purpose or one of the purposes of the meeting is to consider a proposed amendment to the articles and must contain or be accompanied by a copy or summary of the amendment or state the general nature of the amendment. The amendment must be approved by a majority of the directors in office at the time the amendment is adopted.

History: **En. Sec. 111, Ch. 411, L. 1991.**

35-2-223. Amendment by directors and members. (1) Unless this chapter, the articles, the bylaws, the members acting pursuant to subsection (2), or the board of directors acting pursuant to subsection (3) require a greater vote or voting by class to be adopted, an amendment to a corporation's articles must be approved:

(a) by the board if the corporation is a public benefit corporation or religious corporation and the amendment does not relate to the number of directors, the composition of the board, the term of office of directors, or the method or way in which directors are elected or selected;

(b) except as provided in 35-2-222(1), by the members by two-thirds of the votes cast or a majority of the voting power, whichever is less; and

(c) in writing by any person or persons whose approval is required by a provision of the articles, as authorized by 35-2-232.

(2) The members may condition the amendment's adoption on receipt of a higher percentage of affirmative votes or on any other basis.

(3) If the board initiates an amendment to the articles or if board approval is required by subsection (1)(a) to adopt an amendment to the articles, the board may condition the amendment's adoption on receipt of a higher percentage of affirmative votes or any other basis.

(4) If the board or the members seek to have the amendment approved by the members at a membership meeting, the corporation shall give notice to its members of the proposed membership meeting in writing in accordance with 35-2-530. The notice must state that the purpose or one of the purposes of the meeting is to consider the proposed amendment and must contain or be accompanied by a copy or summary of the amendment.

(5) If the board or the members seek to have the amendment approved by the members by written consent or written ballot, the material soliciting the approval must contain or be accompanied by a copy or summary of the amendment.

History: **En. Sec. 112, Ch. 411, L. 1991.**

Cross-References

Notice of members' meetings, 35-2-530.

35-2-224. Class voting by members on amendments. (1) The members of a class in a public benefit corporation are entitled to vote as a class on a proposed amendment to the articles if the amendment would change the rights of that class as to voting in a manner different from the manner in which the amendment affects another class or members of another class.

(2) The members of a class in a mutual benefit corporation are entitled to vote as a class on a proposed amendment to the articles if the amendment would:

(a) affect the rights, privileges, preferences, restrictions, or conditions of that class as to voting, dissolution, redemption, or transfer of memberships in a manner different from the manner in which the amendment would affect another class;

(b) change the rights, privileges, preferences, restrictions, or conditions of that class as to voting, dissolution, redemption, or transfer by changing the rights, privileges, preferences, restrictions, or conditions of another class;

(c) increase or decrease the number of memberships authorized for that class;

(d) increase the number of memberships authorized for another class;

(e) cause an exchange, reclassification, or termination of the memberships of that class; or

(f) authorize a new class of memberships.

(3) The members of a class of a religious corporation are entitled to vote as a class on a proposed amendment to the articles only if a class vote is provided for in the articles or bylaws.

(4) If a class is to be divided into two or more classes as a result of an amendment to the articles of a public benefit corporation or mutual benefit corporation, the amendment must be approved by the members of each class that would be created by the amendment.

(5) Except as provided in the articles or bylaws of a religious corporation, if a class vote is required to approve an amendment to the articles of a corporation, the amendment must be approved by the members of the class by two-thirds of the votes cast by the class or a majority of the voting power of the class, whichever is less.

(6) A class of members of a public benefit corporation or mutual benefit corporation is entitled to the voting rights granted by this section although the articles and bylaws provide that the class may not vote on the proposed amendment.

History: En. Sec. 113, Ch. 411, L. 1991.

35-2-225. Articles of amendment. A corporation that amends its articles shall deliver to the secretary of state, for filing, articles of amendment setting forth:

(1) the name of the corporation;

(2) the text of each amendment adopted;

(3) the date of each amendment's adoption;

(4) if approval of members was not required, a statement to that effect and a statement that the amendment was approved by a sufficient vote of the board of directors or incorporators;

(5) if approval by members was required:

(a) the designation, number of memberships outstanding, number of votes entitled to be cast by each class entitled to vote separately on the amendment, and number of votes of each class indisputably voting on the amendment; and

(b) (i) either the total number of votes cast for and against the amendment by each class entitled to vote separately on the amendment or the total number of undisputed votes cast for the amendment by each class; and

(ii) a statement that the number cast for the amendment by each class was sufficient for approval by that class; and

(6) if approval of the amendment by some person or persons other than the members, the board, or the incorporators is required pursuant to 35-2-232, a statement that the approval was obtained.

History: **En. Sec. 114, Ch. 411, L. 1991.**

35-2-226. Restated articles of incorporation. (1) A corporation's board of directors may restate its articles of incorporation at any time, with or without approval by members or any other person.

(2) The restatement may include one or more amendments to the articles. If the restatement includes an amendment requiring approval by the members or any other person, it must be adopted as provided in 35-2-223.

(3) If the restatement includes an amendment requiring approval by members, the board shall submit the restatement to the members for their approval.

(4) If the board seeks to have the restatement approved by the members at a membership meeting, the corporation shall notify each of its members of the proposed membership meeting in writing in accordance with 35-2-530. The notice must also state that the purpose or one of the purposes of the meeting is to consider the proposed restatement and must contain or be accompanied by a copy or summary of the restatement that identifies any amendments or other change that the restatement would make in the articles.

(5) If the board seeks to have the restatement approved by the members by written ballot or written consent, the material soliciting the approval must contain or be accompanied by a copy or summary of the restatement that identifies any amendments or other change it would make in the articles.

(6) A restatement requiring approval by the members must be approved by the same vote as an amendment to articles under 35-2-223.

(7) If the restatement includes an amendment that requires approval pursuant to 35-2-232, the board shall submit the restatement for this approval.

(8) A corporation that restates its articles shall deliver to the secretary of state, for filing, articles of restatement setting forth the name of the corporation and the text of the restated articles of incorporation, together with a certificate setting forth a statement of whether the restated articles were approved by the board, the members, or any other person and:

(a) if the restatement contains an amendment to the articles requiring approval by the members, the information required by 35-2-225;

(b) if the restatement contains an amendment to the articles requiring approval by a person whose approval is required pursuant to 35-2-232, a statement that the approval was obtained; and

(c) if the restatement has an amendment that does not require member approval, a statement as to who approved the amendment, whether approval was made by the board or any other person.

(9) Adopted restated articles of incorporation supersede the original articles of incorporation and all amendments to them.

(10) The secretary of state may certify restated articles of incorporation as the articles of incorporation currently in effect without including the certificate information required by subsection (8).

History: **En. Sec. 115, Ch. 411, L. 1991; amd. Sec. 14, Ch. 229, L. 1999.**

Compiler's Comments

1999 Amendment: Chapter 229 at end of (8) substituted "a statement of whether the restated articles were approved by the board, the members, or any other person" for former (8)(a) that read: "(a) whether the restatement contains an amendment to the articles requiring approval by the members or any other person other than the board of directors and, if it does not, that the board of directors adopted the restatement"; inserted (8)(c) requiring statement as to whether approval is made by board or other person if no member approval on restatement is required; and made minor changes in style. Amendment effective April 2, 1999.

Cross-References

Articles of incorporation, 35-2-213.
Fees, 35-2-1003.
Filing duty of Secretary of State, 35-2-1109.

35-2-227. Amendment pursuant to judicial reorganization. (1) A corporation's articles may be amended without board approval, approval by the members, or approval required pursuant to 35-2-232 if necessary to carry out a plan of reorganization ordered or decreed by a court of competent jurisdiction under federal statute if the articles, after amendment, contain only provisions required or permitted by 35-2-213.

(2) The individual or individuals designated by the court shall deliver to the secretary of state, for filing, articles of amendment setting forth:

(a) the name of the corporation;

(b) the text of each amendment approved by the court;

(c) the date of the court's order or decree approving the articles of amendment;

(d) the title of the reorganization proceeding in which the order or decree was entered; and

(e) a statement that the court had jurisdiction of the proceeding under federal statute.

(3) This section does not apply after entry of a final decree in the reorganization proceeding even though the court retains jurisdiction of the proceeding for limited purposes unrelated to consummation of the reorganization plan.

History: En. Sec. 116, Ch. 411, L. 1991.

35-2-228. Effect of amendment and restatement. An amendment to articles of incorporation does not affect a cause of action existing against or in favor of the corporation, a proceeding to which the corporation is a party, any requirement or limitation imposed upon the corporation, or any property held by it by virtue of any trust upon which the property is held by the corporation, or the existing rights of persons other than members of the corporation. An amendment changing a corporation's name does not abate a proceeding brought by or against the corporation in its former name.

History: En. Sec. 117, Ch. 411, L. 1991.

35-2-229. Amendment by directors. If a corporation does not have members, its incorporators, until directors have been chosen, and later its board of directors may adopt one or more amendments to the corporation's bylaws subject to any approval required pursuant to 35-2-232. The corporation shall provide notice of any meeting of directors at which an amendment is to be approved. The notice must be in accordance with 35-2-429(3). The notice must also state that the purpose or one of the purposes of the meeting is to consider a proposed amendment to the bylaws and contain or be accompanied by a copy or summary of the amendment or state the general nature of the amendment. The amendment must be approved by a majority of the directors in office at the time the amendment is adopted.

History: **En. Sec. 118, Ch. 411, L. 1991.**

35-2-230. Amendment by directors and members. (1) Unless this chapter, the articles, the bylaws, the members acting pursuant to subsection (2), or the board of directors acting pursuant to subsection (3) require a greater vote or voting by class to be adopted, an amendment to a corporation's bylaws must be approved:

(a) by the board if the corporation is a public benefit corporation or religious corporation and the amendment does not relate to the number of directors, the composition of the board, the term of office of directors, or the method or way in which directors are elected or selected;

(b) by the members by two-thirds of the votes cast or a majority of the voting power, whichever is less; or

(c) in writing by any person or persons whose approval is required by a provision of the articles, as authorized by 35-2-232.

(2) The members may condition the amendment's adoption on its receipt of a higher percentage of affirmative votes or on any other basis.

(3) If the board initiates an amendment to the bylaws or if board approval is required by subsection (1)(a) to adopt an amendment to the bylaws, the board may condition the amendment's adoption on receipt of a higher percentage of affirmative votes or on any other basis.

(4) If the board or the members seek to have the amendment approved by the members at a membership meeting, the corporation shall give notice to its members of the proposed membership meeting in writing in accordance with 35-2-530. The notice must also state that the purpose, or one of the purposes, of the meeting is to consider the proposed amendment and must contain or be accompanied by a copy or summary of the amendment.

(5) If the board or the members seek to have the amendment approved by the members by written consent or written ballot, the material soliciting the approval must contain or be accompanied by a copy or summary of the amendment.

History: **En. Sec. 119, Ch. 411, L. 1991.**

35-2-231. Class voting by members on amendments. (1) The members of a class in a public benefit corporation are entitled to vote as a class on a proposed amendment to the bylaws if the amendment would change the rights of that class as to voting in a manner different from the manner in which the amendment would affect another class or members of another class.

(2) Members of a class in a mutual benefit corporation are entitled to vote as a class on a proposed amendment to the bylaws if the amendment would:

(a) affect the rights, privileges, preferences, restrictions, or conditions of that class as to voting, dissolution, redemption, or transfer of memberships in a manner different from the manner in which the amendment would affect another class;

(b) change the rights, privileges, preferences, restrictions, or conditions of that class as to voting, dissolution, redemption, or transfer by changing the rights, privileges, preferences, restrictions, or conditions of another class;

(c) increase or decrease the number of memberships authorized for that class;

(d) increase the number of memberships authorized for another class;

(e) cause an exchange, reclassification, or termination of all or part of the memberships of that class; or

(f) authorize a new class of memberships.

(3) The members of a class of a religious corporation are entitled to vote as a class on a proposed amendment to the bylaws only if a class vote is provided for in the articles or bylaws.

(4) If a class is to be divided into two or more classes as a result of an amendment to the bylaws, the amendment must be approved by the members of each class that would be created by the amendment.

(5) If a class vote is required to approve an amendment to the bylaws, the amendment must be approved by the members of the class by two-thirds of the votes cast by the class or a majority of the voting power of the class, whichever is less.

(6) A class of members is entitled to the voting rights granted by this section although the articles and bylaws provide that the class may not vote on the proposed amendment.

History: En. Sec. 120, Ch. 411, L. 1991.

35-2-232. Approval by third persons. The articles may require an amendment to the articles or bylaws to be approved in writing by a specified person or persons other than the board. Such an article provision may only be amended with the approval in writing of the person or persons.

History: En. Sec. 121, Ch. 411, L. 1991.

35-2-233. Amendment terminating members or redeeming or canceling memberships. (1) Any amendment to the articles or bylaws of a public benefit corporation or mutual benefit corporation that would terminate all members or any class of members or redeem or cancel all memberships or any class of memberships must meet the requirements of this chapter.

(2) Before adopting a resolution proposing an amendment described in subsection (1), the board of a mutual benefit corporation shall give notice of the general nature of the amendment to the members.

(3) After adopting a resolution proposing an amendment described in subsection (1), the notice to members proposing the amendment must include one statement of up to 500 words opposing the proposed amendment if the statement is submitted by any five members or members having 3% or more of the voting power, whichever is less, not later than 20 days after the board has voted to submit the amendment to the members for their approval. In public benefit corporations, the production and mailing costs must be paid by the corporation.

(4) Any amendment under this section must be approved by the members by two-thirds of the votes cast by each class.

(5) The provisions of 35-2-520 do not apply to any amendment that meets the requirements of this chapter.

History: En. Sec. 122, Ch. 411, L. 1991.

Part 3

Corporate Name, Registered Office and Agent, and Service of Process

35-2-301 through 35-2-304. Repealed. Sec. 174, Ch. 411, L. 1991.

Compiler's Comments

Histories of Repealed Sections:

35-2-301. En. Sec. 7, Ch. 198, L. 1967; R.C.M. 1947, 15-2307; amd. Sec. 6, Ch. 456, L. 1983.

35-2-302. En. Sec. 8, Ch. 198, L. 1967; R.C.M. 1947, 15-2308.

35-2-303. En. Sec. 9, Ch. 198, L. 1967; R.C.M. 1947, 15-2309; amd. Sec. 41, Ch. 131, L. 1983.

35-2-304. En. Sec. 10, Ch. 198, L. 1967; R.C.M. 1947, 15-2310.

35-2-305. Corporate name. (1) A corporate name may not contain language stating or implying that the corporation is organized for a purpose other than that permitted by 35-2-117 and its articles of incorporation.

(2) Except as authorized by subsections (3) and (4), a corporate name must be distinguishable in the records of the secretary of state from:

(a) the corporate name of a nonprofit or business corporation incorporated or authorized to do business in this state;

(b) a corporate name reserved or registered under Title 35, chapter 1, 35-2-306, or 35-2-307;

(c) the fictitious name of a foreign business or nonprofit corporation authorized to transact business in this state because its real name is unavailable;

(d) the corporate name of a domestic business or nonprofit corporation that has been dissolved, but only distinguishable for a period of 120 days after the effective date of the dissolution; or

(e) any assumed business name, limited partnership name, limited liability company name, trademark, or service mark registered or reserved with the secretary of state.

(3) A corporation may apply to the secretary of state for authorization to use a name that is not distinguishable in the secretary of state's records from one or more of the names described in subsection (2). The secretary of state shall authorize use of the name applied for if:

(a) the other corporation consents to the use in writing and submits an undertaking in a form satisfactory to the secretary of state to change its name to a name that is distinguishable in the records of the secretary of state from the name of the applying corporation; or

(b) the applicant delivers to the secretary of state a certified copy of a final judgment of a court of competent jurisdiction establishing the applicant's right to use the name applied for in this state.

(4) A corporation may use the name, including the fictitious name, of another domestic or foreign business or nonprofit corporation that is used in this state if the other corporation is incorporated or authorized to do business in this state and the proposed user corporation:

(a) has merged with the other corporation;

(b) has been formed by reorganization of the other corporation; or

(c) has acquired all or substantially all of the assets, including the corporate name, of the other corporation.

(5) This chapter does not control the use of fictitious names.

History: **En. Sec. 31, Ch. 411, L. 1991; amd. Sec. 85, Ch. 120, L. 1993.**

Cross-References

Petition to change name of nonprofit corporation, 27-31-102.

Assumed business names, Title 30, ch. 13, part 2.

Exclusivity of corporate name, 30-13-202.

Business corporation — corporate name, Title 35, ch. 1, part 3.

Foreign corporation — corporate name, 35-1-1031.

Foreign nonprofit corporation, corporate name, 35-2-826.

Reservation or transfer fee, 35-2-1003.

Acquisition of new name by dissolved corporation upon reinstatement, 35-6-203.

35-2-306. Reserved name. (1) A person may reserve the exclusive use of a corporate name, including a fictitious name for a foreign corporation whose corporate name is not available, by delivering an application to the secretary of state for filing. Upon finding that the corporate name applied for is available, the secretary of state shall reserve the name for the applicant's exclusive use for a nonrenewable 120-day period.

(2) The owner of a reserved corporate name may transfer the reservation to another person by delivering to the secretary of state a signed notice of the transfer that states the name and address of the transferee.

History: **En. Sec. 32, Ch. 411, L. 1991.**

35-2-307. Registered name of foreign corporation. (1) A foreign corporation may register its corporate name, or its corporate name with any change required by 35-2-826, if the name is distinguishable in the records of the secretary of state from:

(a) the corporate name of a nonprofit or business corporation incorporated or authorized to do business in this state; and

(b) a corporate name reserved under Title 35, chapter 1, or 35-2-306 or registered under this section.

(2) A foreign corporation shall register its corporate name, or its corporate name with any change required by 35-2-826, by delivering to the secretary of state, for filing, an application:

(a) setting forth its corporate name or its corporate name with any change required by 35-2-826, the state or country, the date of its incorporation, and a brief description of the nature of the activities in which it is engaged; and

(b) accompanied by a certificate of existence, or a similar document, from the state or country of incorporation.

(3) The name is registered for the applicant's exclusive use on the effective date of the application.

(4) A foreign corporation whose registration is effective may renew it for successive years by delivering to the secretary of state, for filing, a renewal application that complies with the requirements of subsection (2). The renewal application must be delivered between October 1 and December 31 of the preceding year. The renewal application renews the registration for the following calendar year.

(5) A foreign corporation whose registration is effective may continue to qualify as a foreign corporation under that name or consent in writing to the use of that name by a corporation later incorporated under this chapter or by another foreign corporation later authorized to transact business in this state. The registration terminates when the foreign corporation is incorporated as a

domestic corporation or the foreign corporation qualifies or consents to the qualification of another foreign corporation under the registered name.

History: **En. Sec. 33, Ch. 411, L. 1991.**

35-2-308 reserved.

35-2-309. Registered name and registered agent. (1) Each corporation shall continuously maintain in this state:

(a) a registered office with the same address as that of the registered agent; and

(b) a registered agent, who must be one of the following:

(i) an individual who resides in this state and whose office is identical to the registered office;

(ii) a domestic business or nonprofit corporation whose office is identical to the registered office; or

(iii) a foreign business or nonprofit corporation authorized to transact business in this state whose office is identical to the registered office.

(2) Unless the registered agent signed the document making the appointment, the appointment of a registered agent or a successor registered agent on whom process may be served is not effective until the agent delivers a statement in writing to the secretary of state accepting the appointment.

History: **En. Sec. 34, Ch. 411, L. 1991; amd. Sec. 15, Ch. 229, L. 1999.**

Compiler's Comments

1999 Amendment: Chapter 229 inserted (2) regarding effectiveness of appointment of registered agent; and made minor changes in style. Amendment effective April 2, 1999.

Cross-References

Agency, Title 28, ch. 10.

35-2-310. Change of registered office or registered agent. (1) A corporation may change its registered office or registered agent by delivering to the secretary of state, for filing, a statement of change that sets forth:

(a) the name of the corporation;

(b) the street address of its current registered office and, if different, the mailing address;

(c) if the current registered office is to be changed, the street address of the new registered office, and, if different, the mailing address;

(d) the name of its current registered agent;

(e) if the current registered agent is to be changed, the name of the new registered agent and the new agent's written consent to the appointment, either on the statement or attached to it; and

(f) that after the change or changes are made, the street addresses of its registered office and the office of its registered agent will be identical.

(2) If the street address of a registered agent's office is changed, the registered agent may change the street address of the registered office of any corporation for which the registered agent is the registered agent by notifying the corporation in writing of the change and by signing, either manually or in facsimile, and delivering to the secretary of state, for filing, a statement that complies with the requirements of subsection (1) and that states that the corporation has been notified of the change.

History: **En. Sec. 35, Ch. 411, L. 1991.**

Cross-References

Foreign corporation — change of registered office or agent, 35-2-828, 35-2-829.

Fees, 35-2-1003.

35-2-311. Resignation of registered agent. (1) A registered agent may resign as registered agent by signing and delivering to the secretary of state, for filing, the original and two copies of a statement of resignation. The statement may include a statement that the registered office is also discontinued.

(2) After filing the statement, the secretary of state shall mail one copy to the registered office, if not discontinued, and the other copy to the corporation at its principal office as shown in the most recent annual report filed pursuant to 35-2-904.

(3) The agency appointment is terminated, and the registered office discontinued, if so provided, 31 days after the date on which the statement was filed.

History: En. Sec. 36, Ch. 411, L. 1991.

35-2-312 and 35-2-313 reserved.

35-2-314. Service of process on corporation. (1) Service of process on a corporation must be made upon the persons and in the manner provided by the Montana Rules of Civil Procedure.

(2) The following are to be considered trustees for the corporation and its members, for the purpose of service or demand, on a corporation dissolved pursuant to 35-2-309 through 35-2-311, 35-2-315, 35-2-510 through 35-2-514, 35-2-516 through 35-2-520, 35-2-522, 35-2-524, part 13 of this chapter, and this section:

(a) in the case of a dissolution, any one of those persons designated as trustees for service of process pursuant to a filing made with the secretary of state or, if no filing is made, any one of the directors or officers of the corporation listed in the annual report most recently filed with the secretary of state; or

(b) in the case of an involuntary dissolution or expiration of a corporation's term:

(i) any one of those persons designated as receiver by a court of competent jurisdiction; or

(ii) any one of the directors or officers of the corporation listed in the annual report most recently filed with the secretary of state.

History: En. Sec. 37, Ch. 411, L. 1991.

35-2-315. Demand on or notice to corporation. (1) This section applies when a demand or notice is required or permitted by law, but the demand or notice is not required to be served in accordance with the Montana Rules of Civil Procedure.

(2) A corporation's registered agent is the corporation's agent for demand or notice required or permitted by law.

(3) If a corporation has no registered agent or the agent cannot with reasonable diligence be served, the demand may be made or the corporation may be notified by certified mail, return receipt requested, addressed to the secretary of the corporation at its principal office. The demand or notice is perfected under this subsection at the earliest of:

(a) the date the corporation receives the mail;

(b) the date shown on the return receipt, if signed on behalf of the corporation; or

(c) 5 days after its deposit in the United States mail if it is mailed postpaid and correctly addressed.

History: En. Sec. 38, Ch. 411, L. 1991.

Part 4

Directors and Officers — Indemnification

Part Cross-References

Directors and officers of business corporations, Title 35, ch. 1, part 4.

Shareholders, directors, and officers of cooperative associations, Title 35, ch. 15, part 3.

Members and directors of agricultural associations, Title 35, ch. 16, part 3.

Members, directors, and officers of cooperative agricultural marketing associations, Title 35, ch. 17, part 3.

Members, trustees, and officers of rural cooperative utilities, Title 35, ch. 18, part 3.

Trustees of cemetery associations, Title 35, ch. 20, part 2.

35-2-401 through 35-2-413. Repealed. Sec. 174, Ch. 411, L. 1991.

Compiler's Comments

Histories of Repealed Sections:

35-2-401. En. Sec. 17, Ch. 198, L. 1967; R.C.M. 1947, 15-2317.

35-2-402. En. Sec. 18, Ch. 198, L. 1967; R.C.M. 1947, 15-2318.

35-2-403. En. Sec. 22, Ch. 198, L. 1967; R.C.M. 1947, 15-2322.

35-2-404. En. Sec. 20, Ch. 198, L. 1967; R.C.M. 1947, 15-2320.

35-2-405. En. Sec. 91, Ch. 198, L. 1967; R.C.M. 1947, 15-2391(part).

35-2-406. En. Sec. 93, Ch. 198, L. 1967; R.C.M. 1947, 15-2393(part).

35-2-407. En. Sec. 21, Ch. 198, L. 1967; R.C.M. 1947, 15-2321.

35-2-408. En. Sec. 19, Ch. 198, L. 1967; R.C.M. 1947, 15-2319.

35-2-409. En. Sec. 23, Ch. 198, L. 1967; R.C.M. 1947, 15-2323.

35-2-410. En. Sec. 24, Ch. 198, L. 1967; R.C.M. 1947, 15-2324.

35-2-411. En. Sec. 11, Ch. 198, L. 1967; R.C.M. 1947, 15-2311(part).

35-2-412. En. Sec. 27, Ch. 198, L. 1967; R.C.M. 1947, 15-2327.

35-2-413. En. Sec. 86, Ch. 198, L. 1967; R.C.M. 1947, 15-2386.

35-2-414. Requirement for and duties of board. (1) Each corporation must have a board of directors.

(2) Except as provided in this chapter or subsection (3), all corporate powers are exercised by or under the authority of the board, and the affairs of the corporation managed under the direction of its board.

(3) The articles may authorize a person or persons to exercise some or all of the powers that would otherwise be exercised by a board. To the extent authorized, a person authorized under this subsection has the duties and responsibilities of the directors and the directors must be relieved from the duties and responsibilities to that extent.

History: En. Sec. 75, Ch. 411, L. 1991.

35-2-415. Qualifications and numbers of directors. (1) All directors must be individuals. The articles or bylaws may prescribe other qualifications for directors.

(2) A board of directors must consist of three or more individuals, with the number specified in or fixed in accordance with the articles or bylaws.

(3) The number of directors may be increased or decreased, but to not fewer than three, from time to time by amendment to or in the manner prescribed in the articles or bylaws.

History: En. Sec. 76, Ch. 411, L. 1991.

35-2-416. General standards for directors. (1) A director shall discharge his duties as a director, including his duties as a member of a committee:

(a) in good faith;

(b) with the care an ordinarily prudent person in a similar position would exercise under similar circumstances; and

(c) in a manner the director reasonably believes to be in the best interests of the corporation.

(2) In discharging his duties, a director is entitled to rely on information, opinions, reports, or statements, including financial statements and other financial data, if prepared or presented by:

(a) one or more officers or employees of the corporation whom the director reasonably believes to be reliable and competent in the matters presented;

(b) attorneys, public accountants, or other persons with regard to matters the director reasonably believes are within the person's professional or expert competence;

(c) a committee of the board of which the director is not a member, as to matters within its jurisdiction, if the director reasonably believes the committee merits confidence; or

(d) in the case of religious corporations, religious authorities, ministers, priests, rabbis, or other persons whose position or duties in the religious organization the director believes justify reliance and confidence and whom the director believes to be reliable and competent in the matters presented.

(3) A director is not acting in good faith if the director has knowledge concerning the matter in question that makes reliance otherwise permitted by subsection (2) unwarranted.

(4) A director is not liable to the corporation, any member, or any other person for any action taken or not taken as a director if the director acted in compliance with this section.

(5) A director may not be a trustee with respect to the corporation or with respect to any property held or administered by the corporation, including but not limited to property that may be subject to restrictions imposed by the donor or transferor of the property.

(6) This chapter does not modify any limitation of liability of directors provided by Title 27.

History: En. Sec. 91, Ch. 411, L. 1991.

35-2-417. Election, designation and appointment of directors. (1) If the corporation has members, all the directors except the initial directors must be elected at the first annual meeting of members and at each annual meeting thereafter unless the articles or bylaws provide some other time or method of election or provide that some of the directors are appointed by some other person or are designated.

(2) If the corporation does not have members, all the directors except the initial directors must be elected, appointed, or designated as provided in the articles or bylaws. If a method of designation or appointment is not set forth in the articles or bylaws, the directors, other than the initial directors, must be elected by the board.

History: En. Sec. 77, Ch. 411, L. 1991.

35-2-418. Director conflict of interest. (1) A conflict of interest transaction is a transaction with the corporation in which a director of the corporation has a direct or indirect interest. A conflict of interest transaction is not voidable or the basis for imposing liability on the director if the transaction was fair at the time it was entered into or is approved as provided in subsection (2) or (3).

(2) A transaction in which a director of a public benefit corporation or religious corporation has a conflict of interest may be approved:

(a) in advance by the vote of the board of directors or a committee of the board if:

(i) the material facts of the transaction and the director's interest are disclosed or known to the board or committee of the board; and

(ii) the directors approving the transaction in good faith reasonably believe that the transaction is fair to the corporation; or

(b) before or after it is consummated by obtaining approval of:

(i) the attorney general; or

(ii) a state district court in an action in which the attorney general is joined as a party.

(3) A transaction in which a director of a mutual benefit corporation has a conflict of interest may be approved if:

(a) the material facts of the transaction and the director's interest were disclosed or known to the board of directors or a committee of the board and the board or committee of the board authorized, approved, or ratified the transaction; or

(b) the material facts of the transaction and the director's interest were disclosed or known to the members and they authorized, approved, or ratified the transaction.

(4) For purposes of this section, a director of the corporation has an indirect interest in a transaction if:

(a) another entity in which the director has a material interest or in which the director is a general partner is a party to the transaction; or

(b) another entity of which the director is a director, officer, or trustee is a party to the transaction.

(5) For purposes of subsections (2) and (3), a conflict of interest transaction is authorized, approved, or ratified, if it receives the affirmative vote of a majority of the directors on the board or on the committee who have no direct or indirect interest in the transaction. However, a transaction may not be authorized, approved, or ratified under this section by a single director. If a majority of the directors on the board who have no direct or indirect interest in the transaction vote to authorize, approve, or ratify the transaction, a quorum is present for the purpose of taking action under this section. The presence of or a vote cast by a director with a direct or indirect interest in the transaction does not affect the validity of any action taken under subsection (2)(a) or (3)(a) if the transaction is otherwise approved as provided in subsection (2) or (3).

(6) For purposes of subsection (3)(b), a conflict of interest transaction is authorized, approved, or ratified by the members if it receives a majority of the votes entitled to be counted under this subsection. Votes cast by or voted under the control of a director who has a direct or indirect interest in the transaction

and votes cast by or voted under the control of an entity described in subsection (4)(a) may not be counted in a vote of members to determine whether to authorize, approve, or ratify a conflict of interest transaction under subsection (3)(b). The vote of these members, however, is counted in determining whether the transaction is approved under other sections of this chapter. A majority of the voting power, whether or not present, that is entitled to be counted in a vote on the transaction under this subsection constitutes a quorum for the purpose of taking action under this section.

(7) The articles, bylaws, or a resolution of the board may impose additional requirements on conflict of interest transactions.

History: En. Sec. 92, Ch. 411, L. 1991.

35-2-419. Terms of directors generally — staggered terms. (1) The articles or bylaws must specify the terms of directors. Except for designated or appointed directors, the terms of directors may not exceed 5 years. In the absence of any term specified in the articles or bylaws, the term of each director is 1 year. Directors may be elected for successive terms.

(2) A decrease in the number of directors or term of office does not shorten an incumbent director's term.

(3) Except as provided in the articles or bylaws:

(a) the term of a director filling a vacancy in the office of a director elected by members expires at the next election of directors by members; and

(b) the term of a director filling any other vacancy expires at the end of the unexpired term that the director is filling.

(4) Despite the expiration of a director's term, the director continues to serve until the director's successor is elected, designated, or appointed and qualifies or until there is a decrease in the number of directors.

(5) The articles or bylaws may provide for staggering the terms of directors by dividing the total number of directors into groups. The terms of office of the groups need not be uniform.

History: En. Sec. 78, Ch. 411, L. 1991.

35-2-420. Resignation of directors. (1) A director may resign at any time by delivering written notice to the board of directors, its presiding officer, the president, or the secretary.

(2) A resignation is effective when the notice is effective unless the notice specifies a later effective date. If a resignation is made effective at a later date, the board may fill the pending vacancy before the effective date if the board provides that the successor does not take office until the effective date.

History: En. Sec. 79, Ch. 411, L. 1991.

35-2-421. Removal of directors elected by members or directors. (1) The members may remove one or more directors elected by them without cause.

(2) If a director is elected by a class, chapter, or other organizational unit or by region or other geographic grouping, the director may be removed only by the members of that class, chapter, unit, or grouping.

(3) Except as provided in subsection (9), a director may be removed under subsection (1) or (2) only if the number of votes cast to remove the director would be sufficient to elect the director at a meeting to elect directors.

(4) If cumulative voting is authorized, a director may not be removed:

(a) if the number of votes sufficient to elect the director under cumulative voting is voted against the director's removal; or

(b) if the director was elected by a class, chapter, unit, or grouping of members and the number of votes of that class, chapter, unit, or grouping of members sufficient to elect the director under cumulative voting is voted against the director's removal.

(5) A director elected by members may be removed by the members only at a meeting called for the purpose of removing the director. The meeting notice must state that the purpose or one of the purposes of the meeting is removal of the director.

(6) In computing whether a director is protected from removal under subsections (2) through (4), it should be assumed that the votes against removal are cast in an election for the number of directors of the class to which the director to be removed belonged on the date of that director's election.

(7) An entire board of directors may be removed under subsections (1) through (5).

(8) A director elected by the board may be removed without cause by the vote of two-thirds of the directors then in office or by a greater number as is set forth in the articles or bylaws. However, a director elected by the board to fill the vacancy of a director elected by the members may be removed without cause by the members, but not the board.

(9) If, at the beginning of a director's term on the board, the articles or bylaws provide that the director may be removed for missing a specified number of board meetings, the board may remove the director for failing to attend the specified number of meetings. The director may be removed only if a majority of the directors then in office vote for the removal.

(10) The articles or bylaws of a religious corporation may:

(a) limit the application of this section; and

(b) set forth the vote and procedures by which the board or any person may remove with or without cause a director elected by the members of the board.

History: En. Sec. 80, Ch. 411, L. 1991.

35-2-422. Removal of designated or appointed directors. (1) A designated director may be removed by an amendment to the articles or bylaws deleting or changing the designation.

(2) Except as otherwise provided in the articles or bylaws, an appointed director may be removed without cause by the person appointing the director. The person removing the director shall do so by giving written notice of the removal to the director and either the presiding officer of the board or the corporation's president or secretary. The removal of an appointed director is effective when the notice is effective unless the notice specifies a future effective date.

History: En. Sec. 81, Ch. 411, L. 1991.

35-2-423. Removal of directors by judicial proceeding. (1) The district court for the judicial district of the county where a corporation's principal office is located or, if the principal office is not located in the state, the county where its registered office is located may remove any director of the corporation from office in a proceeding commenced by the corporation, by its members holding at least 10% of the voting power of any class, or by the attorney general in the case of a public benefit corporation, if the court finds that:

(a) (i) the director engaged in fraudulent or dishonest conduct or in gross abuse of authority or discretion, with respect to the corporation; or

(ii) a final judgment has been entered finding that the director has violated a duty set forth in 35-2-416, 35-2-418, 35-2-435, or 35-2-436; and

(b) removal is in the best interest of the corporation.

(2) The court that removes a director may bar the director from serving on the board for a period prescribed by the court.

(3) If members or the attorney general commence a proceeding under subsection (1), the corporation must be made a party defendant.

(4) If a public benefit corporation or its members commence a proceeding under subsection (1), they shall give the attorney general written notice of the proceeding.

(5) The articles or bylaws of a religious corporation may limit or prohibit the application of this section.

History: En. Sec. 82, Ch. 411, L. 1991.

35-2-424. Vacancy on board. (1) Unless the articles or bylaws provide otherwise and except as provided in subsections (2) and (3), if a vacancy occurs on a board of directors, including a vacancy resulting from an increase in the number of directors:

(a) (i) the members, if any, may fill the vacancy; or

(ii) if the vacant office was held by a director elected by a class, chapter, organizational unit or by region or other geographic grouping, only members of the class, chapter, unit, or grouping are entitled to vote to fill the vacancy if it is filled by the members;

(b) the board of directors may fill the vacancy; or

(c) if the directors remaining in office constitute fewer than a quorum of the board, they may fill the vacancy by the affirmative vote of a majority of all the directors remaining in office.

(2) Unless the articles or bylaws provide otherwise, if a vacant office was held by an appointed director, only the person who appointed the director may fill the vacancy.

(3) If a vacant office was held by a designated director, the vacancy must be filled as provided in the articles or bylaws. In the absence of an applicable article or bylaw provision, the vacancy may not be filled by the board.

(4) A vacancy that will occur at a specific later date, by reason of a resignation effective at a later date under 35-2-420(2) or otherwise, may be filled before the vacancy occurs. However, the new director may not take office until the vacancy occurs.

History: En. Sec. 83, Ch. 411, L. 1991.

35-2-425. Compensation of directors. Unless the articles or bylaws provide otherwise, the board of directors may fix the compensation of directors.

History: En. Sec. 84, Ch. 411, L. 1991.

35-2-426 reserved.

35-2-427. Regular and special meetings. (1) If the time and place of a directors' meeting is fixed by the bylaws or the board, the meeting is a regular meeting. All other meetings are special meetings.

(2) A board of directors may hold regular or special meetings in the state or out of the state.

(3) Unless the articles or bylaws provide otherwise, a board may permit any or all directors to participate in a regular or special meeting by or to conduct the meeting through the use of any means of communication by which all directors participating may simultaneously hear each other during the meeting. A director participating in a meeting by this means is considered to be present in person at the meeting.

History: En. Sec. 85, Ch. 411, L. 1991.

35-2-428. Action without meeting. (1) Unless the articles or bylaws provide otherwise, action required or permitted by this chapter to be taken at a board of directors' meeting may be taken without a meeting if the action is taken by all members of the board. The action must be evidenced by one or more written consents describing the action taken, be signed by each director, and be included in the minutes filed with the corporate records reflecting the action taken.

(2) Action taken under this section is effective when the last director signs the consent unless the consent specifies a different effective date.

(3) A consent signed under this section has the effect of a meeting vote and may be described as a vote in any document.

History: En. Sec. 86, Ch. 411, L. 1991.

35-2-429. Call and notice of meetings. (1) Unless the articles or bylaws provide otherwise or unless the provisions of subsection (3) apply, regular meetings of the board may be held without notice.

(2) Unless the articles, bylaws, or subsection (3) provide otherwise, special meetings of the board must be preceded by at least 2 days' notice to each director of the date, time, and place, but not the purpose, of the meeting.

(3) In a corporation without members, any board action to remove a director or to approve a matter that would require approval by the members if the corporation had members is not valid unless each director is given at least 7 days' written notice that the matter will be voted upon at a directors' meeting or unless notice is waived pursuant to 35-2-430.

(4) Unless the articles or bylaws provide otherwise, the presiding officer of the board, the president, or 20% of the directors then in office may call and give notice of a meeting of the board.

History: En. Sec. 87, Ch. 411, L. 1991; amd. Sec. 70, Ch. 51, L. 1999.

Compiler's Comments

1999 Amendment: Chapter 51 in (2) near beginning substituted "special meetings" for "regular meetings". Amendment effective March 15, 1999.

35-2-430. Waiver of notice. (1) A director may at any time waive a notice required by this chapter, the articles, or bylaws. Except as provided in subsection (2), the waiver must be in writing, be signed by the director entitled to the notice, and be filed with the minutes or the corporate records.

(2) A director's attendance at or participation in a meeting waives any required notice of the meeting unless the director, upon arriving at the meeting

or prior to the vote on a matter not noticed in conformity with this chapter, the articles, or bylaws, objects to lack of notice and does not vote for or assent to that action.

History: En. Sec. 88, Ch. 411, L. 1991.

35-2-431. Quorum and voting. (1) Except as otherwise provided in this chapter, the articles, or bylaws, a quorum of a board of directors consists of a majority of the directors in office immediately before a meeting begins. In no event may the articles or bylaws authorize a quorum of fewer than the greater of one-third of the number of directors in office or two directors.

(2) If a quorum is present when a vote is taken, the affirmative vote of a majority of directors present is the act of the board unless this chapter, the articles, or bylaws require the vote of a greater number of directors.

History: En. Sec. 89, Ch. 411, L. 1991.

35-2-432 reserved.

35-2-433. Committees of the board. (1) Unless prohibited or limited by the articles or bylaws, a board of directors may create one or more committees of the board and appoint members of the board to serve on them. Each committee must have two or more directors who serve at the pleasure of the board.

(2) The creation of a committee and appointment of members to it must be approved by the greater of:

(a) a majority of all the directors in office when the action is taken; or

(b) the number of directors required by the articles or bylaws to take action under 35-2-431.

(3) Sections 35-2-427 through 35-2-431, which govern meetings, action without meetings, notice, waiver of notice, and quorum and voting requirements of the board, apply to committees of the board and their members.

(4) To the extent specified by the board of directors or in the articles or bylaws, each committee of the board may exercise the board's authority under 35-2-414.

(5) A committee of the board may not:

(a) authorize distributions;

(b) approve or recommend to members dissolution, merger, or the sale, pledge, or transfer of all or substantially all of the corporation's assets;

(c) elect, appoint, or remove directors or fill vacancies on the board or on any of its committees; or

(d) adopt, amend, or repeal the articles or bylaws.

(6) The creation of, delegation of authority to, or action by a committee does not by itself constitute compliance by a director with the standards of conduct described in 35-2-416.

History: En. Sec. 90, Ch. 411, L. 1991.

35-2-434 reserved.

35-2-435. Loans to or guaranties for directors and officers. (1) A corporation may not lend money to or guarantee the obligation of a director or officer of the corporation.

(2) The fact that a loan or guaranty is made in violation of this section does not affect the borrower's liability on the loan.

History: En. Sec. 93, Ch. 411, L. 1991.

35-2-436. Liability for unlawful distributions. (1) Unless a director complies with the applicable standards of conduct described in 35-2-416, a director who votes for or assents to a distribution made in violation of this chapter is personally liable to the corporation for the amount of the distribution that exceeds what could have been distributed without violating this chapter.

(2) A director held liable for an unlawful distribution under subsection (1) is entitled to contribution:

(a) from every other director who voted for or assented to the distribution and who did not comply with the applicable standards of conduct described in 35-2-416; and

(b) from each person who received an unlawful distribution for the amount of the distribution whether or not the person receiving the distribution knew it was made in violation of this chapter.

History: En. Sec. 94, Ch. 411, L. 1991.

35-2-437 and 35-2-438 reserved.

35-2-439. Required officers. (1) Unless otherwise provided in the articles or bylaws, a corporation has a president, a secretary, a treasurer, and any other officers appointed by the board.

(2) The bylaws or the board shall delegate to one of the officers responsibility for preparing minutes of the directors' and members' meetings and for authenticating records of the corporation.

(3) A person may simultaneously hold more than one office in a corporation.

History: En. Sec. 95, Ch. 411, L. 1991.

35-2-440. Duties and authority of officers. Each officer has the authority and shall perform the duties set forth in the bylaws or, to the extent consistent with the bylaws, the duties and authority prescribed in a resolution of the board or by direction of an officer authorized by the board to prescribe the duties and authority of other officers.

History: En. Sec. 96, Ch. 411, L. 1991.

35-2-441. Standards of conduct for officers. (1) An officer with discretionary authority shall discharge his duties under that authority:

(a) in good faith;

(b) with the care an ordinarily prudent person in a similar position would exercise under similar circumstances; and

(c) in a manner the officer reasonably believes to be in the best interests of the corporation and its members, if any.

(2) In discharging his duties, an officer is entitled to rely on information, opinions, reports, or statements, including financial statements and other financial data, if prepared or presented by:

(a) one or more officers or employees of the corporation who the officer reasonably believes to be reliable and competent in the matters presented;

(b) attorneys, public accountants, or other persons as to matters the officer reasonably believes are within the person's professional or expert competence; or

(c) in the case of religious corporations, religious authorities, ministers, priests, rabbis, or other persons whose position or duties in the religious organization the officer believes justify reliance and confidence and who the officer believes to be reliable and competent in the matters presented.

(3) An officer is not acting in good faith if the officer has knowledge concerning the matter in question that makes reliance otherwise permitted by subsection (2) unwarranted.

(4) An officer is not liable to the corporation, any member, or any other person for an action taken or not taken as an officer if the officer acted in compliance with this section.

(5) This part does not modify any limitation of liability of officers provided by Title 27.

History: En. Sec. 97, Ch. 411, L. 1991.

35-2-442. Resignation and removal of officers. (1) An officer may resign at any time by delivering notice to the corporation. A resignation is effective when the notice is effective unless the notice specifies a future effective date. If a resignation is made effective at a future date and the corporation accepts the future effective date, its board of directors may fill the pending vacancy before the effective date if the board provides that the successor does not take office until the effective date.

(2) A board may remove any officer at any time, with or without cause.

History: En. Sec. 98, Ch. 411, L. 1991.

35-2-443. Contract rights of officers. (1) The appointment of an officer does not of itself create contract rights.

(2) An officer's removal does not affect the officer's contract rights, if any, with the corporation. An officer's resignation does not affect the corporation's contract rights, if any, with the officer.

History: En. Sec. 99, Ch. 411, L. 1991.

35-2-444. Officers' authority to execute documents. A contract or other instrument in writing executed or entered into between a corporation and any other person is not invalidated as to the corporation by a lack of authority of the signing officers in the absence of actual knowledge on the part of the other person that the signing officers did not have authority to execute the contract or other instrument if it is signed by:

(1) the presiding officer of the board and the president; or

(2) one person from each of the following:

(a) the presiding officer of the board or the president; and

(b) a vice president, the secretary, treasurer, or executive director.

History: En. Sec. 100, Ch. 411, L. 1991.

35-2-445 reserved.

35-2-446. Definitions. As used in 35-2-446 through 35-2-454, the following definitions apply:

(1) "Corporation" includes any domestic or foreign predecessor entity of a corporation in a merger or other transaction in which the predecessor's existence ceased upon consummation of the transaction.

(2) (a) "Director" means an individual who is or was a director of a corporation or an individual who, while a director of a corporation, is or was serving at the corporation's request as a director, officer, partner, trustee, employee, or agent of another foreign or domestic business or nonprofit

corporation, partnership, joint venture, trust, employee benefit plan, or other enterprise. A director is considered to be serving an employee benefit plan at the corporation's request if the director's duties to the corporation also impose duties on, or otherwise involve services by, the director to the plan or the participants in or beneficiaries of the plan.

(b) Director includes, unless the context requires otherwise, the estate or personal representative of a director.

(3) "Expenses" include attorney fees.

(4) "Liability" means the obligation to pay a judgment, settlement, penalty, fine, excise tax assessed with respect to an employee benefit plan, or reasonable expenses actually incurred with respect to a proceeding.

(5) (a) "Official capacity" means:

(i) when used with respect to a director, the office of director in a corporation; or

(ii) when used with respect to an individual other than a director, as contemplated in 35-2-452, the office in a corporation held by the officer or the employment or agency relationship undertaken by the employee or agent on behalf of the corporation.

(b) Official capacity does not include service for any other foreign or domestic business or nonprofit corporation or any partnership, joint venture, trust, employee benefit plan, or other enterprise.

(6) "Party" includes an individual who was, is, or is threatened to be made a named defendant or respondent in a proceeding.

(7) "Proceeding" means any threatened, pending, or completed action, suit, or proceeding, whether civil, criminal, administrative, or investigative and whether formal or informal.

History: En. Sec. 101, Ch. 411, L. 1991.

35-2-447. Authority to indemnify. (1) Except as provided in subsection (4), an individual made a party to a proceeding because the individual is or was a director may be indemnified against liability incurred in the proceeding if the individual:

(a) conducted himself in good faith;

(b) reasonably believed:

(i) in the case of conduct in his official capacity with the corporation, that his conduct was in its best interests; and

(ii) in all other cases, that his conduct was at least not opposed to its best interests; and

(c) in the case of any criminal proceeding, had no reasonable cause to believe his conduct was unlawful.

(2) A director's conduct with respect to an employee benefit plan for a purpose the director reasonably believed to be in the interests of the participants in and beneficiaries of the plan is conduct that satisfies the requirements of subsection (1)(b)(ii).

(3) The termination of a proceeding by judgment, order, settlement, conviction, or upon a plea of nolo contendere or its equivalent is not, of itself, a determination that the director did not meet the standard of conduct described in this section.

(4) A corporation may not indemnify a director under this section:

(a) in connection with a proceeding by or in the right of the corporation in which the director was adjudged liable to the corporation; or

(b) in connection with any other proceeding that charges improper personal benefit to the director, whether or not involving action in his official capacity, in which the director was adjudged liable on the basis that personal benefit was improperly received by the director.

(5) Indemnification permitted under this section in connection with a proceeding by or in the right of the corporation is limited to reasonable expenses incurred in connection with the proceeding.

History: En. Sec. 102, Ch. 411, L. 1991.

35-2-448. Mandatory indemnification. Unless limited by its articles of incorporation, a corporation shall indemnify a director who was wholly successful, on the merits or otherwise, in the defense of any proceeding to which the director was a party because he is or was a director of the corporation, against reasonable expenses actually incurred by the director in connection with the proceeding.

History: En. Sec. 103, Ch. 411, L. 1991.

35-2-449. Advance for expenses. (1) A corporation may pay for or reimburse the reasonable expenses incurred by a director who is a party to a proceeding in advance of final disposition of the proceeding if:

(a) the director furnishes the corporation a written affirmation of his good faith belief that he has met the standard of conduct described in 35-2-447;

(b) the director furnishes the corporation a written undertaking, executed personally or on the director's behalf, to repay the advance if it is ultimately determined that the director did not meet the standard of conduct; and

(c) a determination is made that the facts then known to those making the determination would not preclude indemnification under 35-2-446 through 35-2-454.

(2) The undertaking required by subsection (1)(b) must be an unlimited general obligation of the director but need not be secured and may be accepted without reference to financial ability to make repayment.

(3) Determinations and authorizations of payments under this section must be made in the manner specified in 35-2-451.

History: En. Sec. 104, Ch. 411, L. 1991.

35-2-450. Court-ordered indemnification. Unless limited by a corporation's articles of incorporation, a director of the corporation who is a party to a proceeding may apply for indemnification to the court conducting the proceeding or to another court of competent jurisdiction. On receipt of an application, the court, after giving any notice the court considers necessary, may order indemnification in the amount it considers proper if it determines that the director:

(1) is entitled to mandatory indemnification under 35-2-448, in which case the court shall also order the corporation to pay the director's reasonable expenses incurred to obtain court-ordered indemnification; or

(2) is fairly and reasonably entitled to indemnification in view of all the relevant circumstances, whether or not the director met the standard of conduct set forth in 35-2-447(1) or was adjudged liable as described in

35-2-447(4). If the director was adjudged liable, indemnification is limited to reasonable expenses incurred.

History: En. Sec. 105, Ch. 411, L. 1991.

35-2-451. Determination and authorization of indemnification. (1) A corporation may not indemnify a director under 35-2-447 unless it is authorized in the specific case after a determination has been made that indemnification of the director is permissible in the circumstances because the director has met the standard of conduct set forth in 35-2-447.

(2) The determination must be made:

(a) by the board of directors by majority vote of a quorum consisting of directors not at the time parties to the proceeding;

(b) if a quorum cannot be obtained under subsection (2)(a), by majority vote of a committee designated by the board of directors consisting solely of two or more directors not at the time parties to the proceeding;

(c) by special legal counsel:

(i) selected by the board of directors or its committee in the manner prescribed in subsection (2)(a) or (2)(b); or

(ii) if a quorum of the board cannot be obtained under subsection (2)(a) and a committee cannot be designated under subsection (2)(b), selected by majority vote of the full board, in which selected directors who are parties may participate; or

(d) by the members of a mutual benefit corporation. However, directors who are at the time parties to the proceeding may not vote on the determination.

(3) Authorization of indemnification and evaluation as to reasonableness of expenses must be made in the same manner as the determination that indemnification is permissible, except that if the determination is made by special legal counsel, authorization of indemnification and evaluation as to reasonableness of expenses must be made by those entitled under subsection (2)(c) to select counsel.

(4) A director of a public benefit corporation may not be indemnified until 20 days after the effective date of written notice to the attorney general of the proposed indemnification.

History: En. Sec. 106, Ch. 411, L. 1991.

35-2-452. Indemnification of officers, employees, and agents. Unless limited by a corporation's articles of incorporation:

(1) an officer of the corporation who is not a director is entitled to mandatory indemnification under 35-2-448 and is entitled to apply for court-ordered indemnification under 35-2-450 to the same extent as a director;

(2) the corporation may indemnify and advance expenses under 35-2-446 through 35-2-454 to an officer, employee, or agent of the corporation who is not a director to the same extent as to a director; and

(3) a corporation may also indemnify and advance expenses to an officer, employee, or agent who is not a director to the extent, consistent with public policy, that may be provided by its articles of incorporation, bylaws, general or specific action of its board of directors, or contract.

History: En. Sec. 107, Ch. 411, L. 1991.

35-2-453. Insurance. A corporation may purchase and maintain insurance on behalf of an individual who is or was a director, officer, employee, or agent of the corporation or who, while a director, officer, employee, or agent of the corporation, is or was serving at the request of the corporation as a director, officer, partner, trustee, employee, or agent of another foreign or domestic business or nonprofit corporation, partnership, joint venture, trust, employee benefit plan, or other enterprise, against liability asserted against or incurred by him in that capacity or arising from his status as a director, officer, employee, or agent, whether or not the corporation would have power to indemnify the person against the same liability under 35-2-447 or 35-2-448.

History: En. Sec. 108, Ch. 411, L. 1991.

35-2-454. Application. (1) A provision treating a corporation's indemnification of or advance for expenses to directors that is contained in its articles of incorporation, its bylaws, a resolution of its members or board of directors, a contract, or other instrument is valid only if and to the extent the provision is consistent with 35-2-446 through 35-2-454. If articles of incorporation limit indemnification or advance for expenses, indemnification and advance for expenses are valid only to the extent consistent with the articles.

(2) Sections 35-2-446 through 35-2-454 do not limit a corporation's power to pay or reimburse expenses incurred by a director in connection with appearing as a witness in a proceeding at a time when the director has not been made a named defendant or respondent to the proceeding.

History: En. Sec. 109, Ch. 411, L. 1991.

Part 5

Members — Delegates — Voting

35-2-501 through 35-2-509. Repealed. Sec. 174, Ch. 411, L. 1991.

Compiler's Comments

Histories of Repealed Sections:

35-2-501. En. Sec. 11, Ch. 198, L. 1967; R.C.M. 1947, 15-2311(part).

35-2-502. En. Sec. 13, Ch. 198, L. 1967; R.C.M. 1947, 15-2313.

35-2-503. En. Sec. 14, Ch. 198, L. 1967; R.C.M. 1947, 15-2314.

35-2-504. En. Sec. 16, Ch. 198, L. 1967; R.C.M. 1947, 15-2316.

35-2-505. En. Sec. 91, Ch. 198, L. 1967; R.C.M. 1947, 15-2391(part).

35-2-506. En. Sec. 93, Ch. 198, L. 1967; R.C.M. 1947, 15-2393(part).

35-2-507. En. Sec. 15, Ch. 198, L. 1967; R.C.M. 1947, 15-2315(part); amd. Sec. 6, Ch. 202, L. 1979.

35-2-508. En. Sec. 15, Ch. 198, L. 1967; R.C.M. 1947, 15-2315(part).

35-2-509. En. Sec. 25, Ch. 198, L. 1967; R.C.M. 1947, 15-2325.

35-2-510. Admission. (1) The articles or bylaws may establish criteria or procedures for admission of members.

(2) A person may not be admitted as a member without his consent.

History: En. Sec. 39, Ch. 411, L. 1991.

35-2-511. Consideration. Except as provided in its articles or bylaws, a corporation may admit members for no consideration or for consideration determined by the board.

History: En. Sec. 40, Ch. 411, L. 1991.

35-2-512. No requirement of members. A corporation is not required to have members.

History: En. Sec. 41, Ch. 411, L. 1991.

35-2-513. Differences in rights and obligations of members. All members have the same rights and obligations with respect to voting, dissolution, redemption, and transfer unless the articles or bylaws establish classes of membership with different rights or obligations. All members have the same rights and obligations with respect to any other matters, except as set forth in or authorized by the articles or bylaws.

History: En. Sec. 42, Ch. 411, L. 1991.

35-2-514. Transfers. (1) Except as set forth in or authorized by the articles or bylaws, a member of a mutual benefit corporation may not transfer a membership or any right arising from a membership.

(2) A member of a public benefit or religious corporation may not transfer a membership or any right arising from a membership.

(3) When transfer rights have been provided, a restriction on them is not binding on a member holding a membership issued prior to the adoption of the restriction unless the restriction is approved by the members and the affected member.

History: En. Sec. 43, Ch. 411, L. 1991.

35-2-515 reserved.

35-2-516. Member's liability to third parties. A member of a corporation is not, as a member, personally liable for the acts, debts, liabilities, or obligations of the corporation.

History: En. Sec. 44, Ch. 411, L. 1991.

35-2-517. Member's liability for dues, assessments, and fees. A member may become liable to the corporation for dues, assessments, or fees. However, an article or bylaw provision or a resolution adopted by the board authorizing or imposing dues, assessments, or fees does not, of itself, create liability.

History: En. Sec. 45, Ch. 411, L. 1991.

35-2-518. Creditor's action against member. (1) A proceeding may not be brought by a creditor to reach the liability, if any, of a member to the corporation unless final judgment has been rendered in favor of the creditor against the corporation and execution has been returned unsatisfied in whole or in part or unless further proceeding would be useless.

(2) All creditors of the corporation, with or without reducing their claims to judgment, may intervene in any creditor's proceeding brought under subsection (1) to reach and apply unpaid amounts due the corporation. Any or all members who owe amounts to the corporation may be joined in the proceeding.

History: En. Sec. 46, Ch. 411, L. 1991.

35-2-519. Resignation. (1) A member may resign at any time.

(2) The resignation of a member does not relieve the member from any obligations the member may have to the corporation as a result of obligations incurred or commitments made prior to resignation.

History: En. Sec. 47, Ch. 411, L. 1991.

35-2-520. Termination, expulsion, and suspension. (1) A member of a public benefit corporation or mutual benefit corporation may not be expelled or suspended and membership in these corporations may not be terminated or suspended except pursuant to a procedure that is fair and reasonable and is carried out in good faith.

(2) A procedure is fair and reasonable when either:

(a) the articles or bylaws set forth a procedure that provides:

(i) not less than 15 days' prior written notice of the expulsion, suspension, or termination and the reasons for it; and

(ii) an opportunity for the member to be heard, orally or in writing, not less than 5 days before the effective date of the expulsion, suspension, or termination by a person or persons authorized to decide that the proposed expulsion, termination, or suspension not take place; or

(b) it takes into consideration all relevant facts and circumstances.

(3) A written notice given by mail must be given by first-class or certified mail sent to the last address of the member shown on the corporation's records.

(4) A proceeding that challenges an expulsion, suspension, or termination, including a proceeding in which defective notice is alleged, must be commenced within 1 year after the effective date of the expulsion, suspension, or termination.

(5) A member who has been expelled or suspended may be liable to the corporation for dues, assessments, or fees as a result of obligations incurred or commitments made prior to the expulsion or suspension.

History: En. Sec. 48, Ch. 411, L. 1991.

35-2-521 reserved.

35-2-522. Purchase of memberships. (1) A public benefit corporation or religious corporation may not purchase any of its memberships or any right arising from membership.

(2) A mutual benefit corporation may purchase the membership of a member who resigns or whose membership is terminated for the amount and pursuant to the conditions set forth in or authorized by its articles or bylaws. A payment may not be made in violation of 35-2-1401 and 35-2-1402.

History: En. Sec. 49, Ch. 411, L. 1991.

35-2-523 reserved.

35-2-524. Delegates. (1) A corporation may provide in its articles or bylaws for delegates who have some or all of the authority of members.

(2) The articles or bylaws may set forth provisions relating to:

(a) the characteristics, qualifications, rights, limitations, and obligations of delegates including their selection and removal;

(b) calling, noticing, holding, and conducting meetings of delegates; and

(c) carrying on corporate activities during and between meetings of delegates.

History: En. Sec. 57, Ch. 411, L. 1991.

35-2-525 reserved.

35-2-526. Annual and regular meetings. (1) A corporation with members shall hold a membership meeting annually at a time stated in or fixed in accordance with the bylaws.

(2) A corporation with members may hold regular membership meetings at the times stated in or fixed in accordance with the bylaws.

(3) Annual and regular membership meetings may be held in the state or out of the state, at the place stated in or fixed in accordance with the bylaws. If a place is not stated in or fixed in accordance with the bylaws, annual and regular meetings must be held at the corporation's principal office.

(4) At the annual meeting:

(a) the president and chief financial officer shall report on the activities and financial condition of the corporation; and

(b) the members shall consider and act upon other matters that are raised consistent with the notice and voting requirements of 35-2-530 and 35-2-538(2).

(5) At regular meetings, the members shall consider and act upon matters raised consistent with the notice and voting requirements of 35-2-530 and 35-2-538(2).

(6) The failure to hold an annual or regular meeting at a time stated in or fixed in accordance with a corporation's bylaws does not affect the validity of any corporate action.

(7) If the corporation has 50 or fewer members and if permitted by the bylaws, members may participate in a meeting of the members by means of a conference telephone call or similar communication equipment through which all persons participating in the meeting can hear each other at the same time. Participation in this manner constitutes presence in person at a meeting.

History: En. Sec. 58, Ch. 411, L. 1991.

35-2-527. Special meeting. (1) A corporation with members shall hold a special meeting of members:

(a) on the call of its board or of the person authorized to do so by the articles or bylaws; or

(b) except as provided in the articles or bylaws of a religious corporation, if the holders of at least 5% of the voting power of any corporation sign, date, and deliver to any corporate officer one or more written demands for the meeting that describe the purpose or purposes for which it is to be held.

(2) For purposes of determining whether the 5% requirement of subsection (1) has been met, the record date is at the close of business on the 30th day before delivery of the demand or demands for a special meeting to any corporate officer.

(3) If a notice for a special meeting demanded under subsection (1)(b) is not given pursuant to 35-2-530 within 30 days after the date the written demand is delivered to a corporate officer, regardless of the requirements of subsection (4), a person signing the demand or demands may set the time and place of the meeting and give notice pursuant to 35-2-530.

(4) Special meetings of members may be held in the state or out of the state, at the place stated in or fixed in accordance with the bylaws. If a place is not stated or fixed in accordance with the bylaws, special meetings must be held at the corporation's principal office.

(5) Only those matters that are within the purpose or purposes described in the meeting notice required by 35-2-530 may be conducted at a special meeting of members.

History: En. Sec. 59, Ch. 411, L. 1991.

35-2-528. Court-ordered meeting. (1) The district court for the judicial district of the county where a corporation's principal office is located, or, if the principal office is not located in this state, where its registered office is located may summarily order a meeting to be held:

(a) on application of a member or other person entitled to participate in an annual or regular meeting and, in the case of a public benefit corporation, the attorney general, if an annual meeting was not held within the earlier of 6 months after the end of the corporation's fiscal year or 15 months after its last annual meeting;

(b) on application of a member or other person entitled to participate in a regular meeting and, in the case of a public benefit corporation, the attorney general, if a regular meeting is not held within 40 days after the date it was required to be held; or

(c) on application of a member who signed a demand for a special meeting valid under 35-2-527, a person entitled to call a special meeting and, in the case of a public benefit corporation, the attorney general, if:

(i) notice of the special meeting was not given within 30 days after the date the demand was delivered to a corporate officer; or

(ii) the special meeting was not held in accordance with the notice.

(2) The court may fix the time and place of the meeting, specify a record date for determining members entitled to notice of and to vote at the meeting, prescribe the form and content of the meeting notice, fix the quorum required for specific matters to be considered at the meeting or direct that the votes represented at the meeting constitute a quorum for action on those matters, and enter other orders necessary to accomplish the purpose or purposes of the meeting.

(3) If the court orders a meeting, it may also order the corporation to pay the member's costs, including reasonable attorney fees, incurred to obtain the order.

History: En. Sec. 60, Ch. 411, L. 1991.

35-2-529. Action by written consent. (1) Unless limited or prohibited by the articles or bylaws, action required or permitted by this chapter to be approved by the members may be approved without a meeting of members if the action is approved by members holding at least 80% of the voting power. The action must be evidenced by one or more written consents that describe the action taken, be signed by those members representing at least 80% of the voting power, and be delivered to the corporation for inclusion in the minutes or filing with the corporate records.

(2) If not otherwise determined under 35-2-528 or 35-2-532, the record date for determining members entitled to take action without a meeting is the date the first member signs the consent under subsection (1).

(3) A consent signed under this section has the effect of a meeting vote and may be described as a vote in any document filed with the secretary of state.

(4) Written notice of member approval pursuant to this section must be given to all members who have not signed the written consent. If written notice is required, member approval pursuant to this section is effective 10 days after written notice is given.

History: En. Sec. 61, Ch. 411, L. 1991.

35-2-530. Notice of meeting. (1) A corporation shall give notice consistent with its bylaws of meetings of members in a fair and reasonable manner.

(2) Any notice that conforms to the requirements of subsection (3) is fair and reasonable, but other means of giving notice may also be fair and reasonable when all the circumstances are considered. However, notice of matters referred to in subsection (3)(b) must be given as specified in subsection (3).

(3) Notice is fair and reasonable if:

(a) the corporation notifies its members of the place, date, and time of each annual, regular, and special meeting of members not less than 10 days before the meeting date or, if notice is mailed by certified mail, not less than 30 or more than 60 days before the meeting date;

(b) notice of an annual or regular meeting includes a description of any matter or matters that must be approved by the members under 35-2-223, 35-2-230, 35-2-418, 35-2-452, 35-2-611, 35-2-617, 35-2-720, or 35-2-721; and

(c) notice of a special meeting includes a description of the matter or matters for which the meeting is called.

(4) Unless the bylaws require otherwise, if an annual, regular, or special meeting of members is adjourned to a different date, time, or place, notice need not be given of the new date, time, or place, if the new date, time, or place is announced at the meeting before adjournment. If a new record date for the adjourned meeting is or must be fixed under 35-2-532, notice of the adjourned meeting must be given under this section to the members of record as of the new record date.

(5) When giving notice of an annual, regular, or special meeting of members, a corporation shall give notice of a matter a member intends to raise at the meeting if:

(a) requested in writing to do so by a person entitled to call a special meeting; and

(b) the request is received by the secretary or president of the corporation at least 10 days before the corporation gives notice of the meeting.

History: **En. Sec. 62, Ch. 411, L. 1991.**

35-2-531. Waiver of notice. (1) A member may waive a notice required by this chapter, the articles, or bylaws before or after the date and time stated in the notice. The waiver must be in writing, be signed by the member entitled to the notice, and be delivered to the corporation for inclusion in the minutes or filing with the corporate records.

(2) A member's attendance at a meeting:

(a) waives objection to lack of notice or defective notice of the meeting unless the member, at the beginning of the meeting, objects to holding the meeting or transacting business at the meeting; and

(b) waives objection to consideration of a particular matter at the meeting that is not within the purpose or purposes described in the meeting notice unless the member objects to considering the matter when it is presented.

History: **En. Sec. 63, Ch. 411, L. 1991.**

35-2-532. Record date — determining members entitled to notice and vote. (1) The bylaws of a corporation may fix or provide the manner of fixing a date as the record date for determining the members entitled to notice of a members' meeting. If the bylaws do not fix or provide for fixing a record date, the board may fix a future date as the record date. If a record date is not fixed, members are entitled to notice of the meeting:

(a) at the close of business on the business day preceding the day on which notice is given; or

(b) if notice is waived, at the close of business on the business day preceding the day on which the meeting is held.

(2) The bylaws of a corporation may fix or provide the manner of fixing a date as the record date for determining the members entitled to vote at a members' meeting. If the bylaws do not fix or provide for fixing a record date, the board may fix a future date as the record date. If a record date is not fixed, members on the date of the meeting who are otherwise eligible to vote are entitled to vote at the meeting.

(3) The bylaws may fix or provide the manner for determining a date as the record date for the purpose of determining the members entitled to exercise any rights in respect of any other lawful action. If the bylaws do not fix or provide for fixing a record date, the board may fix in advance the record date. If a record date is not fixed, members are entitled to exercise the rights at the close of business on the day on which the board adopts the resolution relating to it or 60 days prior to the date of other action, whichever is later.

(4) A record date fixed under this section may not be more than 70 days before the meeting or action requiring a determination of members occurs.

(5) A determination of members entitled to notice of or to vote at a membership meeting is effective for any adjournment of the meeting unless the board fixes a new date for determining the right to notice or the right to vote, which it must do if the meeting is adjourned to a date more than 70 days after the record date for determining members entitled to notice of the original meeting.

(6) If a court orders a meeting adjourned to a date more than 120 days after the date fixed for the original meeting, it may provide that the original record date for notice or voting continues in effect or it may fix a new record date for notice or voting.

History: En. Sec. 64, Ch. 411, L. 1991.

35-2-533. Action by written ballot. (1) Unless prohibited or limited by the articles or bylaws, any action that may be taken at any annual, regular, or special meeting of members may be taken without a meeting if the corporation delivers a written ballot to every member entitled to vote on the matter.

(2) A written ballot must:

(a) set forth each proposed action; and

(b) provide an opportunity to vote for or against each proposed action.

(3) Approval by written ballot pursuant to this section is valid only when:

(a) the number of votes cast by ballot equals or exceeds the quorum required to be present at a meeting authorizing the action; and

(b) the number of approvals equals or exceeds the number of votes that would be required to approve the matter at a meeting at which the total number of votes cast was the same as the number of votes cast by ballot.

(4) All solicitations for votes by written ballot must:

(a) indicate the number of responses needed to meet the quorum requirements;

(b) state the percentage of approvals necessary to approve each matter other than election of directors; and

(c) specify the time by which a ballot must be received by the corporation in order to be counted.

(5) Except as otherwise provided in the articles or bylaws, a written ballot may not be revoked.

History: **En. Sec. 65, Ch. 411, L. 1991.**

35-2-534 reserved.

35-2-535. Members' list for meeting. (1) After fixing a record date for a notice of a meeting, a corporation shall prepare an alphabetical list of the names of all its members who are entitled to notice of the meeting. The list must show the address and number of votes each member is entitled to vote at the meeting. The corporation shall prepare, on a current basis through the time of the membership meeting, a list of members, if any, who are entitled to vote at the meeting but not entitled to notice of the meeting. This list must be prepared on the same basis and be part of the list of members.

(2) The list of members must be available:

(a) for inspection by any member for the purpose of communication with other members concerning the meeting, beginning 2 business days after notice is given of the meeting for which the list was prepared and continuing through the meeting; and

(b) at the corporation's principal office or at a reasonable place identified in the meeting notice in the city where the meeting will be held. A member, a member's agent, or a member's attorney is entitled, on written demand, to inspect and, subject to the limitations of 35-2-907(3) and 35-2-910 to copy the list, at a reasonable time and at the member's expense, during the period it is available for inspection.

(3) The corporation shall make the list of members available at the meeting, and any member, a member's agent, or a member's attorney is entitled to inspect the list at any time during the meeting or any adjournment.

(4) If the corporation refuses to allow a member, a member's agent, or a member's attorney to inspect the list of members before or at the meeting or to copy the list as permitted by subsection (2), the district court for the judicial district of the county where a corporation's principal office or, if the principal office is not located in this state, where its registered office is located, on application of the member, may summarily order the inspection or copying at the corporation's expense, may postpone the meeting for which the list was prepared until the inspection or copying is complete, and may order the corporation to pay the member's costs, including reasonable attorney fees, incurred to obtain the order.

(5) Unless a written demand to inspect and copy a membership list has been made under subsection (2) prior to the membership meeting and a corporation improperly refuses to comply with the demand, refusal or failure to comply with this section does not affect the validity of action taken at the meeting.

(6) The articles or bylaws of a religious corporation may limit or abolish the rights of a member under this section to inspect and copy any corporate record.

History: **En. Sec. 66, Ch. 411, L. 1991.**

35-2-536. Voting entitlement generally. (1) Unless the articles or bylaws provide otherwise, each member is entitled to one vote on each matter voted on by the members.

(2) Unless the articles or bylaws provide otherwise, if a membership stands of record in the names of two or more persons, their acts with respect to voting have the following effect:

(a) if only one votes, the act binds all; and

(b) if more than one votes, the vote is divided on a pro rata basis.

History: **En. Sec. 67, Ch. 411, L. 1991.**

35-2-537. Quorum requirements. (1) Unless this chapter, the articles, or bylaws provide for a higher or lower quorum, 10% of the votes entitled to be cast on a matter must be represented at a meeting of members to constitute a quorum on that matter.

(2) A bylaw amendment to decrease the quorum for any member action may be approved by the members or, unless prohibited by the bylaws, by the board.

(3) A bylaw amendment to increase the quorum required for any member action must be approved by the members.

(4) Unless one-third or more of the voting power is present in person or by proxy, the only matters that may be voted upon at an annual or regular meeting of members are those matters that are described in the meeting notice.

History: **En. Sec. 68, Ch. 411, L. 1991.**

35-2-538. Voting requirements. (1) Unless this chapter, the articles, or bylaws require a greater vote or voting by class, if a quorum is present, the affirmative vote of the votes represented and voting, if they are a majority of the required quorum, is the act of the members.

(2) A bylaw amendment to increase or decrease the vote required for any member action must be approved by the members.

History: **En. Sec. 69, Ch. 411, L. 1991.**

35-2-539. Proxies. (1) Unless the articles or bylaws prohibit or limit proxy voting, a member may appoint a proxy to vote or otherwise act for the member by signing an appointment form, either personally or by an attorney-in-fact.

(2) An appointment of a proxy is effective when received by the secretary or other officer or agent authorized to tabulate votes. An appointment is valid for 11 months unless a different period is expressly provided in the appointment form. However, a proxy is not valid for more than 3 years from its date of execution.

(3) An appointment of a proxy is revocable by the member.

(4) The death or incapacity of the member appointing a proxy does not affect the right of the corporation to accept the proxy's authority unless notice of the death or incapacity is received by the secretary or other officer or agent authorized to tabulate votes before the proxy exercises authority under the appointment.

(5) Appointment of a proxy is revoked by the person appointing the proxy:
(a) attending any meeting and voting in person; or
(b) signing and delivering to the secretary or other officer or agent authorized to tabulate proxy votes either a writing stating that the appointment of the proxy is revoked or a subsequent appointment form.
(6) Subject to 35-2-542 and any express limitation on the proxy's authority appearing on the face of the appointment form, a corporation is entitled to accept the proxy's vote or other action as that of the member who made the appointment.
History: **En. Sec. 70, Ch. 411, L. 1991.**

35-2-540. Cumulative voting for directors — exception. (1) If the articles or bylaws provide for cumulative voting by members, members may so vote by multiplying the number of votes the members are entitled to cast by the number of directors for whom they are entitled to vote and casting the product for a single candidate or distributing the product among two or more candidates.
(2) Cumulative voting is not authorized at a particular meeting unless:
(a) the meeting notice or statement accompanying the notice states that cumulative voting will take place; or
(b) a member gives notice during the meeting and before the vote is taken of the member's intent to cumulate votes. If one member gives this notice, all other members participating in the election are entitled to cumulate their votes without giving further notice.
(3) A director elected by cumulative voting may be removed by the members without cause if the requirements of 35-2-421 are met unless the votes cast against removal or not consenting in writing to removal would be sufficient to elect the director if voted cumulatively at an election at which the same total number of votes were cast or, if the action is taken by written ballot, all memberships entitled to vote were voted, and if the entire number of directors authorized at the time of the director's most recent election were then being elected.
(4) Members may not cumulatively vote if the directors and members are identical.
History: **En. Sec. 71, Ch. 411, L. 1991.**

35-2-541. Other methods of electing directors. A corporation may provide in its articles or bylaws for election of directors by members or delegates:
(1) on the basis of chapter or other organizational unit;
(2) by region or other geographic unit;
(3) by preferential voting; or
(4) by any other reasonable method.
History: **En. Sec. 72, Ch. 411, L. 1991.**

35-2-542. Corporation's acceptance of votes. (1) If the name signed on a vote, consent, waiver, or proxy appointment corresponds to the name of a member, the corporation, if acting in good faith, is entitled to accept the vote, consent, waiver, or proxy appointment and give it effect as the act of the member.

(2) If the name signed on a vote, consent, waiver, or proxy appointment does not correspond to the record name of a member, the corporation, if acting in good faith, is nevertheless entitled to accept the vote, consent, waiver, or proxy appointment and give it effect as the act of the member if:

(a) the member is an entity and the name signed purports to be that of an attorney-in-fact of the member and, if the corporation requests, evidence acceptable to the corporation of the signatory's authority to sign for the member has been presented with respect to the vote, consent, waiver, or proxy appointment;

(b) the name signed purports to be that of an attorney-in-fact of the member and, if the corporation requests, evidence acceptable to the corporation of the signatory's authority to sign for the member has been presented with respect to the vote, consent, waiver, or proxy appointment;

(c) two or more persons hold the membership as cotenants or fiduciaries and:

(i) the name signed purports to be the name of at least one of the coholders; and

(ii) the person signing appears to be acting on behalf of all the coholders; or

(d) in the case of a mutual benefit corporation:

(i) the name signed purports to be that of an administrator, executor, guardian, or conservator representing the member and, if the corporation requests, evidence of fiduciary status acceptable to the corporation has been presented with respect to the vote, consent, waiver, or proxy appointment; or

(ii) the name signed purports to be that of a receiver or trustee in bankruptcy of the member and, if the corporation requests, evidence of this status acceptable to the corporation has been presented with respect to the vote, consent, waiver, or proxy appointment.

(3) The corporation is entitled to reject a vote, consent, waiver, or proxy appointment if the secretary or other officer or agent authorized to tabulate votes, acting in good faith, has reasonable basis for doubt about the validity of the signature on it or about the signatory's authority to sign for the member.

(4) The corporation and its officer or agent who accepts or rejects a vote, consent, waiver, or proxy appointment in good faith and in accordance with the standards of this section are not liable in damages to the member for the consequences of the acceptance or rejection.

(5) Corporate action based on the acceptance or rejection of a vote, consent, waiver, or proxy appointment under this section is valid unless a court of competent jurisdiction determines otherwise.

History: **En. Sec. 73, Ch. 411, L. 1991.**

35-2-543. Voting agreements. (1) Two or more members may provide for the manner in which they will vote by signing an agreement for that purpose. Voting agreements may be valid for a period of up to 10 years. For public benefit corporations, voting agreements must have a reasonable purpose consistent with the corporation's public or charitable purposes.

(2) A voting agreement created under this section is specifically enforceable.

History: **En. Sec. 74, Ch. 411, L. 1991.**

Part 6

Merger, Consolidation, and Sale of Assets

35-2-601 through 35-2-607. Repealed. Sec. 174, Ch. 411, L. 1991.

Compiler's Comments

Histories of Repealed Sections:

35-2-601. En. Sec. 38, Ch. 198, L. 1967; R.C.M. 1947, 15-2338.

35-2-602. En. Sec. 39, Ch. 198, L. 1967; R.C.M. 1947, 15-2339.

35-2-603. En. Sec. 40, Ch. 198, L. 1967; R.C.M. 1947, 15-2340.

35-2-604. En. Sec. 41, Ch. 298, L. 1967; R.C.M. 1947, 15-2341; amd. Sec. 42, Ch. 131, L. 1983.

35-2-605. En. Sec. 42, Ch. 198, L. 1967; R.C.M. 1947, 15-2342.

35-2-606. En. Sec. 43, Ch. 198, L. 1967; R.C.M. 1947, 15-2343.

35-2-607. En. Sec. 44, Ch. 198, L. 1967; R.C.M. 1947, 15-2344.

35-2-608. Approval of plan of merger. (1) Subject to the limitations set forth in 35-2-609, one or more nonprofit corporations may merge into a business or nonprofit corporation if the plan of merger is approved as provided in 35-2-610.

(2) The plan of merger must set forth:

(a) the name of each corporation planning to merge and the name of the surviving corporation into which each plans to merge;

(b) the terms and conditions of the planned merger;

(c) the manner and basis, if any, of converting the memberships of each public benefit or religious corporation into memberships of the surviving corporation; and

(d) if the merger involves a mutual benefit corporation, the manner and basis, if any, of converting memberships of each merging corporation into memberships, obligations, or securities of the surviving or any other corporation or into cash or other property in whole or part.

(3) The plan of merger may set forth:

(a) any amendments to the articles of incorporation or bylaws of the surviving corporation to be effected by the planned merger; and

(b) other provisions relating to the planned merger.

History: En. Sec. 123, Ch. 411, L. 1991; amd. Sec. 5, Ch. 249, L. 1993.

35-2-609. Limitations on mergers by public benefit or religious corporations. (1) Without the prior approval of the district court for the judicial district in which the corporation's registered office is located, in a proceeding of which the attorney general has been given written notice, a public benefit corporation or religious corporation may merge only with:

(a) a public benefit corporation or religious corporation;

(b) a foreign corporation that would qualify under this chapter as a public benefit corporation or religious corporation;

(c) a wholly owned foreign or domestic business or mutual benefit corporation, if the public benefit corporation or religious corporation is the surviving corporation and continues to be a public benefit corporation or religious corporation after the merger; or

(d) a business or mutual benefit corporation, provided that:

(i) on or prior to the effective date of the merger, assets with a value equal to the greater of the fair market value of the net tangible and intangible assets, including good will, of the public benefit corporation or the fair market value of the public benefit corporation if it were to be operated as a business concern are transferred or conveyed to one or more persons who would have received its assets under 35-2-725(1)(e) and (1)(f) had it dissolved;

(ii) it shall return, transfer, or convey any assets held by it upon condition requiring return, transfer, or conveyance in case of merger, in accordance with the condition; and

(iii) the merger is approved by a majority of directors of the public benefit corporation or religious corporation who are not and will not become members or shareholders in or officers, employees, agents, or consultants of the surviving corporation.

(2) At least 20 days before consummation of any merger of a public benefit corporation or a religious corporation pursuant to subsection (1)(d), notice, including a copy of the proposed plan of merger, must be delivered to the attorney general.

(3) Without the prior written consent of the attorney general or of the district court in a proceeding in which the attorney general has been given notice, a member of a public benefit corporation or religious corporation may not receive or keep anything as a result of a merger other than a membership in the surviving public benefit corporation or religious corporation. The court shall approve the transaction if it is in the public interest.

History: En. Sec. 124, Ch. 411, L. 1991.

35-2-610. Action on plan by board, members, and third persons. (1) Unless this chapter, the articles, the bylaws, or the board of directors or members, acting pursuant to subsection (3), require a greater vote or voting by class to be adopted, a plan of merger must be approved:

(a) by the board;

(b) by the members, if any, by two-thirds of the votes cast or a majority of the voting power, whichever is less; and

(c) in writing by any person or persons whose approval is required by a provision of the articles, as authorized by 35-2-232, for an amendment to the articles or bylaws.

(2) If the corporation does not have members, the merger must be approved by a majority of the directors in office at the time the merger is approved. In addition, the corporation shall provide notice, in accordance with 35-2-429(3), of any directors' meeting at which approval is to be obtained. The notice must also state that the purpose or one of the purposes of the meeting is to consider the proposed merger.

(3) The board may condition its submission of the proposed merger and the members may condition their approval of the merger on receipt of a higher percentage of affirmative votes or on any other basis.

(4) If the board seeks to have the plan approved by the members at a membership meeting, the corporation shall give notice to its members of the proposed membership meeting in accordance with 35-2-530. The notice must state that the purpose or one of the purposes of the meeting is to consider the plan of merger and contain or be accompanied by a copy or summary of the plan. The copy or summary of the plan for members of the surviving corporation must include any provision that, if contained in a proposed amendment to the articles of incorporation or bylaws, would entitle members to vote on the provision. The copy or summary of the plan for members of the disappearing corporation must include a copy or summary of the articles and bylaws that will be in effect immediately after the merger takes effect.

(5) If the board seeks to have the plan approved by the members by written consent or written ballot, the material soliciting the approval must contain or be accompanied by a copy or summary of the plan. The copy or summary of the plan for members of the surviving corporation must include any provision that, if contained in a proposed amendment to the articles of incorporation or bylaws, would entitle members to vote on the provision. The copy or summary of the plan for members of the disappearing corporation must include a copy or summary of the articles and bylaws that will be in effect immediately after the merger takes effect.

(6) Voting by a class of members is required on a plan of merger if the plan contains a provision that, if contained in a proposed amendment to articles of incorporation or bylaws, would entitle the class of members to vote as a class on the proposed amendment under 35-2-224 or 35-2-231. The plan is approved by a class of members by two-thirds of the votes cast by the class or a majority of the voting power of the class, whichever is less.

(7) After a merger is adopted and at any time before articles of merger are filed, the planned merger may be abandoned, subject to any contractual rights, without further action by members or other persons who approved the plan in accordance with the procedure set forth in the plan of merger or, if no procedure is set forth, in the manner determined by the board of directors.

History: En. Sec. 125, Ch. 411, L. 1991.

35-2-611. Articles of merger. After a plan of merger is approved by the board of directors and, if required by 35-2-610, by the members and any other persons, the surviving or acquiring corporation shall deliver to the secretary of state, for filing, articles of merger setting forth:

(1) the plan of merger;

(2) if approval of members was not required, a statement to that effect and a statement that the plan was approved by a sufficient vote of the board of directors;

(3) if approval by members was required:

(a) the designation, number of memberships outstanding, number of votes entitled to be cast by each class entitled to vote separately on the plan, and number of votes of each class indisputably voting on the plan; and

(b) (i) either the total number of votes cast for and against the plan by each class entitled to vote separately on the plan or the total number of undisputed votes cast for the plan by each class; and

(ii) a statement that the number cast for the plan by each class was sufficient for approval by that class;

(4) if approval of the plan by some person or persons other than the members or the board is required pursuant to 35-2-610(1)(c), a statement that the approval was obtained.

History: En. Sec. 126, Ch. 411, L. 1991.

Cross-References

Fees, 35-2-1003.

35-2-612. Effect of merger. When a merger takes effect:

(1) every other corporation party to the merger merges into the surviving corporation and the separate existence of every corporation except the surviving corporation ceases;

(2) the title to all real estate and other property owned by each corporation party to the merger is vested in the surviving corporation without reversion or impairment, subject to any conditions to which the property was subject prior to the merger;

(3) the surviving corporation has all liabilities and obligations of each corporation party to the merger;

(4) a proceeding pending against any corporation party to the merger may be continued as if the merger did not occur or the surviving corporation may be substituted in the proceeding for the corporation whose existence ceased; and

(5) the articles of incorporation and bylaws of the surviving corporation are amended to the extent provided in the plan of merger.

History: En. Sec. 127, Ch. 411, L. 1991.

35-2-613. Merger with foreign corporation. (1) Except as provided in 35-2-609, one or more foreign business or nonprofit corporations may merge with one or more domestic nonprofit corporations if:

(a) the merger is permitted by the law of the state or country under whose law each foreign corporation is incorporated and each foreign corporation complies with that law in effecting the merger; or

(b) the foreign corporation complies with 35-2-611 if it is the surviving corporation of the merger; and

(c) each domestic nonprofit corporation complies with the applicable provisions of 35-2-608 through 35-2-610 and, if it is the surviving corporation of the merger, with the provisions of 35-2-611.

(2) When the merger takes effect, the surviving foreign business or nonprofit corporation is considered to have irrevocably appointed the secretary of state as its agent for service of process in any proceeding brought against it.

History: En. Sec. 128, Ch. 411, L. 1991.

Cross-References

Withdrawal of foreign corporation, 35-2-831.

35-2-614. Bequests, devises, and gifts. A bequest, devise, gift, grant, or promise contained in a will or other instrument of donation, subscription, or conveyance that is made to a constituent corporation and that takes effect or remains payable after the merger inures to the surviving corporation unless the will or other instrument specifically provides otherwise.

History: En. Sec. 129, Ch. 411, L. 1991.

35-2-615 reserved.

35-2-616. Sale of assets in regular course of activities — mortgage of assets. (1) A corporation may on the terms and conditions and for the consideration determined by the board of directors:

(a) sell, lease, exchange, or otherwise dispose of all or substantially all of its property in the usual and regular course of its activities; or

(b) mortgage, pledge, dedicate to the repayment of indebtedness, whether with or without recourse, or otherwise encumber any or all of its property, whether or not in the usual and regular course of its activities.

(2) Unless the articles require it, approval of the members or any other person of a transaction described in subsection (1) is not required.

(3) Unless the articles provide otherwise, approval of a transaction described in subsection (1)(a) is required by a vote of a majority of the directors in office at the time the transaction is approved.

History: **En. Sec. 130, Ch. 411, L. 1991.**

35-2-617. Sale of assets other than in regular course of activities. (1) A corporation may sell, lease, exchange, or otherwise dispose of all or substantially all of its property, which may include the good will, other than in the usual and regular course of its activities on the terms and conditions and for the consideration determined by the corporation's board if the proposed transaction is approved as required by subsection (2).

(2) Unless this chapter, the articles, bylaws, or the board of directors or members, acting pursuant to subsection (4), require a greater vote or voting by class, the proposed transaction to be authorized must be approved:

(a) by the board;

(b) by the members by two-thirds of the votes cast or a majority of the voting power, whichever is less; and

(c) in writing by any person or persons whose approval is required by a provision of the articles, as authorized by 35-2-232, for an amendment to the articles or bylaws.

(3) If the corporation does not have members, the transaction must be approved by a vote of a majority of the directors in office at the time the transaction is approved. In addition, the corporation shall provide notice, in accordance with 35-2-429(3), of any directors' meeting at which approval is to be obtained. The notice must also state that the purpose or one of the purposes of the meeting is to consider the sale, lease, exchange, or other disposition of all or substantially all of the property or assets of the corporation and must contain or be accompanied by a copy or summary of a description of the transaction.

(4) The board may condition its submission of the proposed transaction and the members may condition their approval of the transaction on receipt of a higher percentage of affirmative votes or on any other basis.

(5) If the corporation seeks to have the transaction approved by the members at a membership meeting, the corporation shall give notice to its members of the proposed membership meeting in accordance with 35-2-530. The notice must state that the purpose or one of the purposes of the meeting is to consider the sale, lease, exchange, or other disposition of all or substantially all of the property or assets of the corporation and must contain or be accompanied by a copy or summary of a description of the transaction.

(6) If the board needs to have the transaction approved by the members by written consent or written ballot, the material soliciting the approval must contain or be accompanied by a copy or summary of a description of the transaction.

(7) A public benefit corporation or religious corporation must give written notice to the attorney general 20 days before it sells, leases, exchanges, or otherwise disposes of all or substantially all of its property if the transaction is not in the usual and regular course of its activities unless the attorney general has given the corporation a written waiver of this subsection.

(8) After a sale, lease, exchange, or other disposition of property is authorized, the transaction may be abandoned, subject to any contractual rights, without further action by the members or any other person who approved the transaction in accordance with the procedure set forth in the resolution proposing the transaction or, if no procedure is set forth, in the manner determined by the board of directors.

History: **En. Sec. 131, Ch. 411, L. 1991.**

Part 7
Dissolution and Liquidation

Part Cross-References

Dissolution and liquidation of business corporations, Title 35, ch. 1, part 9.

Involuntary corporate dissolution, Title 35, ch. 6.

Dissolution and winding up of partnerships in general, Title 35, ch. 10, part 6.

Dissolution of limited partnerships, Title 35, ch. 12, part 12.

Sale or disposition of assets of cooperative associations, 35-15-506.

Sale or disposition of assets of cooperative agricultural marketing associations, 35-17-506.

Dissolution of rural cooperative utilities, 35-18-404, 35-18-405.

35-2-701 through 35-2-706. Repealed. Sec. 174, Ch. 411, L. 1991.

Compiler's Comments

Histories of Repealed Sections:

35-2-701. En. Sec. 45, Ch. 198, L. 1967; R.C.M. 1947, 15-2345.

35-2-702. En. Sec. 46, Ch. 198, L. 1967; R.C.M. 1947, 15-2346.

35-2-703. En. Sec. 47, Ch. 198, L. 1967; R.C.M. 1947, 15-2347.

35-2-704. En. Sec. 48, Ch. 198, L. 1967; R.C.M. 1947, 15-2348.

35-2-705. En. Sec. 49, Ch. 198, L. 1967; R.C.M. 1947, 15-2349; amd. Sec. 43, Ch. 131, L. 1983.

35-2-706. En. Sec. 50, Ch. 198, L. 1967; R.C.M. 1947, 15-2350; amd. Sec. 44, Ch. 131, L. 1983.

35-2-707 through 35-2-710 reserved.

35-2-711 through 35-2-719. Repealed. Sec. 174, Ch. 411, L. 1991.

Compiler's Comments

Histories of Repealed Sections:

35-2-711. En. Sec. 54, Ch. 198, L. 1967; amd. Sec. 1, Ch. 62, L. 1969; amd. Sec. 8, Ch. 455, L. 1977; R.C.M. 1947, 15-2354; amd. Sec. 153, Ch. 575, L. 1981.

35-2-712. En. Sec. 55, Ch. 198, L. 1967; R.C.M. 1947, 15-2355.

35-2-713. En. Sec. 56, Ch. 198, L. 1967; R.C.M. 1947, 15-2356.

35-2-714. En. Sec. 57, Ch. 198, L. 1967; R.C.M. 1947, 15-2357.

35-2-715. En. Sec. 58, Ch. 198, L. 1967; R.C.M. 1947, 15-2358.

35-2-716. En. Sec. 59, Ch. 198, L. 1967; amd. Sec. 2, Ch. 62, L. 1969; R.C.M. 1947, 15-2359.

35-2-717. En. Sec. 60, Ch. 198, L. 1967; R.C.M. 1947, 15-2360.

35-2-718. En. Sec. 61, Ch. 198, L. 1967; R.C.M. 1947, 15-2361.

35-2-719. En. Sec. 62, Ch. 198, L. 1967; R.C.M. 1947, 15-2362.

35-2-720. Dissolution by incorporators or directors and third persons. (1) A majority of the incorporators or directors of a corporation that does not have members may, subject to any approval required by the articles or bylaws, dissolve the corporation by delivering to the secretary of state articles of dissolution.

(2) The corporation shall give notice of any meeting at which dissolution will be approved. The notice must be in accordance with 35-2-429(3). The notice must also state that the purpose or one of the purposes of the meeting is to consider dissolution of the corporation.

(3) In approving dissolution, the incorporators or directors shall adopt a plan of dissolution indicating to whom the assets owned or held by the corporation will be distributed after all creditors have been paid.

History: **En. Sec. 134, Ch. 411, L. 1991.**

35-2-721. Dissolution by directors, members, and third persons. (1) Unless this chapter, the articles, bylaws, or the board of directors or members, acting pursuant to subsection (1)(c), require a greater vote or voting by class, dissolution is authorized if it is approved:

(a) by the board;

(b) by the members, if any, by two-thirds of the votes cast or a majority of the voting power, whichever is less; and

(c) in writing, by any person or persons whose approval is required by a provision of the articles, as authorized by 35-2-232, for an amendment to the articles or bylaws.

(2) If the corporation does not have members, dissolution must be approved by a vote of a majority of the directors in office at the time the transaction is approved. In addition, the corporation shall provide notice of any directors' meeting at which approval is to be obtained in accordance with 35-2-429(3). The notice must also state that the purpose or one of the purposes of the meeting is to consider dissolution of the corporation and contain or be accompanied by a copy or summary of the plan of dissolution.

(3) The board may condition its submission of the proposed dissolution, and the members may condition their approval of the dissolution on receipt of a higher percentage of affirmative votes or on any other basis.

(4) If the board seeks to have dissolution approved by the members at a membership meeting, the corporation shall give notice to its members of the proposed membership meeting in accordance with 35-2-530. The notice must state that the purpose or one of the purposes of the meeting is to consider dissolving the corporation and must contain or be accompanied by a copy or summary of the plan of dissolution.

(5) If the board seeks to have dissolution approved by the members by written consent or written ballot, the material soliciting the approval must contain or be accompanied by a copy or summary of the plan of dissolution.

(6) The plan of dissolution must indicate to whom the assets owned or held by the corporation will be distributed after all creditors have been paid.

History: **En. Sec. 135, Ch. 411, L. 1991.**

35-2-722. Notices to the attorney general. (1) A public benefit corporation or religious corporation shall give the attorney general written notice that it intends to dissolve at or before the time it delivers articles of dissolution to the secretary of state. The notice must include a copy or summary of the plan of dissolution.

(2) Assets may not be transferred or conveyed by a public benefit corporation or religious corporation as part of the dissolution process until 20 days after it has given the written notice required by subsection (1) to the attorney general or until the attorney general has consented in writing to the dissolution or indicated in writing that he will not take action in respect to the transfer or conveyance, whichever is earlier.

(3) When all or substantially all of the assets of a public benefit corporation have been transferred or conveyed following approval of dissolution, the board shall deliver to the attorney general a list showing those, other than creditors, to whom the assets were transferred or conveyed. The list must indicate the address of each person, other than creditors, who received assets and indicate what assets each received.

History: En. Sec. 136, Ch. 411, L. 1991.

35-2-723. Articles of dissolution. (1) At any time after dissolution is authorized, the corporation may dissolve by delivering to the secretary of state articles of dissolution setting forth:

(a) the name of the corporation;

(b) the date dissolution was authorized;

(c) a statement that dissolution was approved by a sufficient vote of the board;

(d) if approval of members was not required, a statement to that effect and a statement that dissolution was approved by a sufficient vote of the board of directors or incorporators;

(e) if approval by members was required:

(i) the designation, number of memberships outstanding, number of votes entitled to be cast by each class entitled to vote separately on dissolution, and number of votes of each class indisputably voting on dissolution; and

(ii) (A) either the total number of votes cast for and against dissolution by each class entitled to vote separately on dissolution or the total number of undisputed votes cast for dissolution by each class; and

(B) a statement that the number cast for dissolution by each class was sufficient for approval by that class;

(f) if approval of dissolution by some person or persons other than the members, the board, or the incorporators is required pursuant to 35-2-721(1)(c), a statement that the approval was obtained; and

(g) if the corporation is a public benefit or religious corporation, that the notice to the attorney general required by 35-2-722(1) has been given.

(2) A corporation is dissolved upon the effective date of its articles of dissolution.

History: En. Sec. 137, Ch. 411, L. 1991.

Cross-References

Filing fees, 35-2-1003.

Appeal from refusal to file, 35-2-1110.

35-2-724. Revocation of dissolution. (1) A corporation may revoke its dissolution within 120 days of its effective date.

(2) Revocation of dissolution must be authorized in the same manner as the dissolution was authorized unless that authorization permitted revocation by action of the board of directors alone, in which event the board of directors may revoke the dissolution without action by the members or any other person.

(3) After the revocation of dissolution is authorized, the corporation may revoke the dissolution by delivering to the secretary of state, for filing, articles of revocation of dissolution, together with a copy of its articles of dissolution, that set forth:

(a) the name of the corporation;

(b) the effective date of the dissolution that was revoked;

(c) the date that the revocation of dissolution was authorized;

(d) if the corporation's board of directors or incorporators revoked the dissolution, a statement to that effect;

(e) if the corporation's board of directors revoked a dissolution authorized by the members alone or in conjunction with another person or persons, a statement that revocation was permitted by action by the board of directors alone pursuant to that authorization; and

(f) if member or third person action was required to revoke the dissolution, the information required by 35-2-723(1)(e) and (1)(f).

(4) Revocation of dissolution is effective upon the effective date of the articles of revocation of dissolution.

(5) When the revocation of dissolution is effective, it relates back to and takes effect as of the effective date of the dissolution and the corporation may resume carrying on its activities as if dissolution had never occurred.

History: En. Sec. 138, Ch. 411, L. 1991.

35-2-725. Effect of dissolution. (1) A dissolved corporation continues its corporate existence but may not carry on any activities except those appropriate to wind up and liquidate its affairs, including:

(a) preserving and protecting its assets and minimizing its liabilities;

(b) discharging or making provision for discharging its liabilities and obligations;

(c) disposing of its properties that will not be distributed in kind;

(d) returning, transferring, or conveying assets held by the corporation upon a condition requiring return, transfer, or conveyance in accordance with the condition;

(e) transferring, subject to any contractual or legal requirements, its assets as provided in or authorized by its articles of incorporation or bylaws;

(f) if the corporation is a public benefit corporation or religious corporation and provision has not been made in its articles or bylaws for distribution of assets on dissolution, transferring, subject to any contractual or legal requirement, its assets:

(i) to one or more persons described in section 501(c)(3) of the Internal Revenue Code; or

(ii) if the dissolved corporation is not described in section 501(c)(3) of the Internal Revenue Code, to one or more public benefit corporations or religious corporations;

(g) if the corporation is a mutual benefit corporation and provision has not been made in its articles or bylaws for distribution of assets on dissolution, transferring its assets to its members or, if it does not have members, to those persons whom the corporation holds itself out as benefitting or serving; and

(h) doing every other act necessary to wind up and liquidate its assets and affairs.

(2) Dissolution of a corporation does not:

(a) transfer title to the corporation's property;

(b) subject its directors or officers to standards of conduct different from those prescribed in part 4 of this chapter;

(c) change quorum or voting requirements for its board or members; change provisions for selection, resignation, or removal of its directors or officers, or both; or change provisions for amending its bylaws;

(d) prevent commencement of a proceeding by or against the corporation in its corporate name;

(e) abate or suspend a proceeding pending by or against the corporation on the effective date of dissolution; or

(f) terminate the authority of the registered agent.

History: En. Sec. 139, Ch. 411, L. 1991.

Cross-References

Cancellation of registration of assumed business name upon dissolution of domestic corporation, 30-13-214.

Fees, 35-2-1003.

Appeal from refusal to file, 35-2-1110.

35-2-726. Known claims against dissolved corporation. (1) A dissolved corporation shall dispose of the known claims against it by following the procedure described in this section.

(2) The dissolved corporation shall notify its known claimants in writing of the dissolution at any time after its effective date. The written notice must:

(a) describe information that must be included in a claim;

(b) provide a mailing address where a claim may be sent;

(c) state the deadline, which may not be fewer than 120 days from the effective date of the written notice, by which the dissolved corporation must receive the claim; and

(d) state that the claim will be barred if not received by the deadline.

(3) A claim against the dissolved corporation is barred:

(a) if a claimant who was given written notice under subsection (2) does not deliver the claim to the dissolved corporation by the deadline; or

(b) if a claimant whose claim was rejected by the dissolved corporation does not commence a proceeding to enforce the claim within 90 days from the effective date of the rejection notice.

(4) For purposes of this section, "claim" does not include a contingent liability or a claim based on an event occurring after the effective date of dissolution.

History: En. Sec. 140, Ch. 411, L. 1991.

35-2-727. Unknown claims against dissolved corporations. (1) The dissolution of a corporation, including by the expiration of its term, does not take away or impair any remedy available to or against the corporation, its officers, directors, or members for any claim or right, whether or not the claim or right existed or accrued prior to the dissolution. Any action or proceeding by or against the corporation referred to in this subsection may be prosecuted or defended by the corporation in its corporate name. Members, directors, and officers may take corporate or other action as is appropriate to protect a remedy, right, or claim.

(2) A claim may be enforced under this section or 35-2-726:

(a) against the dissolved corporation, to the extent of its undistributed assets; or

(b) if the assets have been distributed in liquidation, against a member of the dissolved corporation to the extent of the member's pro rata share of the claim or the corporate assets distributed to him in liquidation, whichever is less. However, a member's total liability for all claims under this section may not exceed the total amount of assets distributed to the member.

(3) Subsections (1) and (2) apply to a foreign corporation transacting business in this state, and its members, for any claims otherwise arising or accruing under Montana law.

History: En. Sec. 141, Ch. 411, L. 1991.

35-2-728. Grounds for judicial dissolution. (1) The district court may dissolve a corporation:

(a) in a proceeding by the attorney general if it is established that:

(i) the corporation obtained its articles of incorporation through fraud;

(ii) the corporation has continued to exceed or abuse the authority conferred upon it by law;

(iii) the corporation is a public benefit corporation and the corporate assets are being misapplied or wasted; or

(iv) the corporation is a public benefit corporation and is no longer able to carry out its purposes;

(b) in a proceeding by 50 members or members holding 5% of the voting power, whichever is less, or by a director or any person specified in the articles, except as provided in the articles or bylaws of a religious corporation, if it is established that:

(i) the directors are deadlocked in the management of the corporate affairs and the members, if any, are unable to breach the deadlock;

(ii) the directors or those in control of the corporation have acted, are acting, or will act in a manner that is illegal, oppressive, or fraudulent;

(iii) the members are deadlocked in voting power and have failed, for a period that includes at least two consecutive annual meeting dates, to elect successors to directors whose terms have or would otherwise have expired;

(iv) the corporate assets are being misapplied or wasted; or

(v) the corporation is a public benefit corporation or religious corporation and is no longer able to carry out its purposes;

(c) in a proceeding by a creditor if it is established that:

(i) the creditor's claim has been reduced to judgment, the execution on the judgment returned unsatisfied, and the corporation is insolvent; or

(ii) the corporation has admitted in writing that the creditor's claim is due and owing and the corporation is insolvent; or

(d) in a proceeding by the corporation to have its voluntary dissolution continued under court supervision.

(2) Prior to dissolving a corporation, the court shall consider whether:

(a) there are reasonable alternatives to dissolution;

(b) dissolution is in the public interest, if the corporation is a public benefit corporation; and

(c) dissolution is the best way of protecting the interests of members if the corporation is a mutual benefit corporation.

History: En. Sec. 142, Ch. 411, L. 1991.

Cross-References

Involuntary dissolution — procedure, 35-6-104.

Reinstatement of dissolved corporation, 35-6-201.

35-2-729. Procedure for judicial dissolution. (1) Venue for a proceeding by the attorney general to dissolve a corporation lies in the district court for the first judicial district. Venue for a proceeding brought by any other party named in 35-2-728 lies in the judicial district for the county where a corporation's principal office or, if the principal office is not located in this state, the county where its registered office is or was last located.

(2) It is not necessary to make directors or members parties to a proceeding to dissolve a corporation unless relief is sought against them individually.

(3) In a proceeding brought to dissolve a corporation, a court may issue injunctions, appoint a receiver or custodian pendente lite with all powers and duties the court directs, take other action required to preserve the corporate assets wherever located, and carry on the activities of the corporation until a full hearing can be held.

(4) A person other than the attorney general who brings an involuntary dissolution proceeding for a public benefit corporation or religious corporation shall give written notice of the proceeding to the attorney general who may intervene.

History: En. Sec. 143, Ch. 411, L. 1991.

35-2-730. Receivership or custodianship. (1) A court in a judicial proceeding brought to dissolve a public benefit corporation or mutual benefit corporation may appoint one or more receivers to wind up and liquidate the affairs of the corporation or one or more custodians to manage the affairs of the corporation. The court shall hold a hearing, after notifying all parties to the proceeding and any interested persons designated by the court, before appointing a receiver or custodian. The court appointing a receiver or custodian has exclusive jurisdiction over the corporation and all of its property, wherever located.

(2) The court may appoint, as a receiver or custodian, an individual authorized to transact business in this state or a domestic or foreign business or nonprofit corporation authorized to transact business in this state. The court may require the receiver or custodian to post bond, with or without sureties, in an amount the court directs.

(3) The court shall describe the powers and duties of the receiver or custodian in its appointing order, which may be amended from time to time. Among other powers:

(a) the receiver:

(i) may, if authorized by the court, dispose of all or any part of the assets of the corporation wherever located, at a public or private sale, subject to any trust and other restrictions that would be applicable to the corporation; and

(ii) may sue and defend in the receiver's or custodian's name as receiver or custodian of the corporation in all courts of this state; and

(b) the custodian may exercise all the powers of the corporation through or in place of its board of directors or officers to the extent necessary to manage the affairs of the corporation in the best interests of its members and creditors.

(4) The court during a receivership may redesignate the receiver a custodian and during a custodianship may redesignate the custodian a receiver if doing so is in the best interests of the corporation, its members, and its creditors.

(5) From time to time during the receivership or custodianship, the court may order compensation paid and expense disbursements or reimbursements made to the receiver or custodian and the receiver or custodian's counsel from the assets of the corporation or proceeds from the sale of the assets.

History: En. Sec. 144, Ch. 411, L. 1991.

Cross-References

Receivers, Title 27, ch. 20.

Suretyship, Title 28, ch. 11, part 4.

35-2-731. Decree of dissolution. (1) If after a hearing the court determines that one or more grounds for judicial dissolution described in 35-2-728 exist, it may enter a decree dissolving the corporation and specifying the effective date of the dissolution, and the clerk of the court shall deliver a certified copy of the decree to the secretary of state, who shall file it.

(2) After entering the decree of dissolution, the court shall direct the winding up and liquidation of the corporation's affairs in accordance with 35-2-725 and the notification of its claimants in accordance with 35-2-726 and 35-2-727.

History: En. Sec. 145, Ch. 411, L. 1991.

35-2-732. Deposit with state treasurer. Assets of a dissolved corporation that should be transferred to a creditor, claimant, or member of the corporation who cannot be found or who is not competent to receive them must be reduced to cash, subject to known trust restrictions, and deposited with the state treasurer for safekeeping. However, in the state treasurer's discretion, property may be received and held in kind. When the creditor, claimant, or member furnishes satisfactory proof of entitlement to the amount deposited or property held in kind, the state treasurer shall deliver to the creditor, claimant, member, or other person as his representative that amount or property.

History: En. Sec. 146, Ch. 411, L. 1991.

Part 8

Foreign Corporations

35-2-801 through 35-2-819. Repealed. Sec. 174, Ch. 411, L. 1991.

Compiler's Comments

Histories of Repealed Sections:

35-2-801. En. Sec. 63, Ch. 198, L. 1967; R.C.M. 1947, 15-2363(part).

35-2-802. En. Sec. 63, Ch. 198, L. 1967; R.C.M. 1947, 15-2363(part).

35-2-803. En. Sec. 80, Ch. 198, L. 1967; R.C.M. 1947, 15-2380.

35-2-804. En. Sec. 64, Ch. 198, L. 1967; R.C.M. 1947, 15-2364.

35-2-805. En. Sec. 65, Ch. 198, L. 1967; R.C.M. 1947, 15-2365; amd. Sec. 7, Ch. 456, L. 1983.

35-2-806. En. Sec. 66, Ch. 198, L. 1967; R.C.M. 1947, 15-2366.

35-2-807. En. Sec. 67, Ch. 198, L. 1967; R.C.M. 1947, 15-2367; amd. Sec. 45, Ch. 131, L. 1983.

35-2-808. En. Sec. 68, Ch. 198, L. 1967; R.C.M. 1947, 15-2368; amd. Sec. 46, Ch. 131, L. 1983.

35-2-809. En. Sec. 69, Ch. 198, L. 1967; R.C.M. 1947, 15-2369.

35-2-810. En. Sec. 75, Ch. 198, L. 1967; R.C.M. 1947, 15-2375; amd. Sec. 47, Ch. 131, L. 1983.

35-2-811. En. Sec. 70, Ch. 198, L. 1967; R.C.M. 1947, 15-2370.

35-2-812. En. Sec. 71, Ch. 198, L. 1967; R.C.M. 1947, 15-2371; amd. Sec. 48, Ch. 131, L. 1983.

35-2-813. En. Sec. 72, Ch. 198, L. 1967; R.C.M. 1947, 15-2372.

35-2-814. En. Sec. 73, Ch. 198, L. 1967; R.C.M. 1947, 15-2373.

35-2-815. En. Sec. 74, Ch. 198, L. 1967; R.C.M. 1947, 15-2374.

35-2-816. En. Sec. 76, Ch. 198, L. 1967; R.C.M. 1947, 15-2376.

35-2-817. En. Sec. 77, Ch. 198, L. 1967; R.C.M. 1947, 15-2377; amd. Sec. 49, Ch. 131, L. 1983.

35-2-818. En. Sec. 78, Ch. 198, L. 1967; R.C.M. 1947, 15-2378.

35-2-819. En. Sec. 79, Ch. 198, L. 1967; R.C.M. 1947, 15-2379; amd. Sec. 8, Ch. 456, L. 1983.

35-2-820. Authority to transact business required. (1) A foreign corporation may not transact business in this state until it obtains a certificate of authority from the secretary of state.

(2) The following activities, among others, do not constitute transacting business within the meaning of subsection (1):

(a) maintaining, defending, or settling any proceeding;

(b) holding meetings of the board of directors or members or carrying on other activities concerning internal corporate affairs;

(c) maintaining bank accounts;

(d) maintaining offices or agencies for the transfer, exchange, and registration of memberships or securities or maintaining trustees or depositaries with respect to those securities;

(e) selling through independent contractors;

(f) soliciting or obtaining orders, whether by mail or through employees or agents or otherwise, if the orders require acceptance outside this state before they become contracts;

(g) creating or acquiring indebtedness, mortgages, and security interests in real or personal property;

(h) securing or collecting debts or enforcing mortgages and security interests in property securing the debts;

(i) owning real or personal property:

(i) that is acquired incident to activities described in subsection (2)(h) if the property is disposed of within 5 years after the date of acquisition; or

(ii) that does not produce income or is not used in the performance of a corporate function;

(j) conducting an isolated transaction that is completed within 30 days and that is not a transaction in the course of repeated transactions of a similar nature; or

(k) transacting business in interstate commerce.

(3) The list of activities in subsection (2) is not exhaustive.

History: En. Sec. 147, Ch. 411, L. 1991.

Cross-References

Fees, 35-2-1003.

35-2-821. Consequences of transacting business without authority. (1) A foreign corporation transacting business in this state without a certificate of authority may not maintain a proceeding in any court in this state until it obtains a certificate of authority.

(2) The successor to a foreign corporation that transacted business in this state without a certificate of authority and the assignee of a cause of action arising out of that business may not maintain a proceeding on that cause of action in any court in this state until the foreign corporation or its successor obtains a certificate of authority.

(3) A court may stay a proceeding commenced by a foreign corporation, its successor, or its assignee until it determines whether the foreign corporation, its successor, or its assignee requires a certificate of authority. If it determines that a certificate is required, the court may further stay the proceeding until the foreign corporation, its successor, or its assignee obtains the certificate.

(4) A foreign corporation is liable for a civil penalty of $5 for each day, but not to exceed a total of $1,000 for each year, that it transacts business in this state without a certificate of authority. The attorney general may collect all penalties due under this subsection.

(5) Notwithstanding the provisions of subsections (1) and (2), the failure of a foreign corporation to obtain a certificate of authority does not impair the validity of its corporate acts or prevent it from defending any proceeding in this state.

History: **En. Sec. 148, Ch. 411, L. 1991.**

Cross-References

Fee for certificate, 35-2-1003.

35-2-822. Application for certificate of authority. (1) A foreign corporation may apply for a certificate of authority to transact business in this state by delivering an application to the secretary of state. The application must set forth:

(a) the name of the foreign corporation or, if its name is unavailable for use in this state, a corporate name that satisfies the requirements of 35-2-826;

(b) the name of the state or country under whose law it is incorporated;

(c) the date of incorporation and period of duration;

(d) the street address and, if different, the mailing address of its principal office;

(e) the street address and, if different, the mailing address of its registered office in this state and the name of its registered agent at that office;

(f) the names and usual business or home addresses of its current directors and officers;

(g) whether the foreign corporation has members;

(h) whether the corporation, if it had been incorporated in this state, would be a public benefit corporation, mutual benefit corporation, or religious corporation; and

(i) the purpose or purposes of the corporation that it proposes to pursue in the transaction of business in this state.

(2) The foreign corporation shall deliver with the completed application a certificate of existence or a similar document authenticated by the secretary of state or other official having custody of corporate records in the state or country under whose law the foreign corporation is incorporated.

History: **En. Sec. 149, Ch. 411, L. 1991.**

35-2-823. Amended certificate of authority. (1) A foreign corporation authorized to transact business in this state shall obtain an amended certificate of authority from the secretary of state if it changes:

(a) its corporate name;

(b) the period of its duration;

(c) the state or country of its incorporation; or

(d) its designation as a public benefit corporation, mutual benefit corporation, or religious corporation.

(2) The requirements of 35-2-822 for obtaining an original certificate of authority apply to obtaining an amended certificate under this section.

History: En. Sec. 150, Ch. 411, L. 1991.

35-2-824. Effect of certificate of authority. (1) A certificate of authority authorizes the foreign corporation to which it is issued the right to transact business in this state subject, however, to the right of the state to revoke the certificate as provided in this chapter.

(2) A foreign corporation with a valid certificate of authority has the same rights and enjoys the same privileges as a domestic corporation of a similar character and, except as otherwise provided by this chapter, is subject to the same duties, restrictions, penalties, and liabilities now or later imposed on a domestic corporation of a similar character.

(3) This chapter does not authorize this state to regulate the organization or internal affairs of a foreign corporation authorized to transact business in this state.

History: En. Sec. 151, Ch. 411, L. 1991.

35-2-825 reserved.

35-2-826. Corporate name of foreign corporation. (1) If the corporate name of a foreign corporation does not satisfy the requirements of 35-2-305, the foreign corporation, to obtain or maintain a certificate of authority to transact business in this state, may use a fictitious name to transact business in this state if:

(a) its real name is unavailable; and

(b) it delivers to the secretary of state, for filing, a copy of the resolution of its board of directors, certified by its secretary, adopting the fictitious name.

(2) Except as authorized by subsections (3) and (4), the corporate name, including a fictitious name, of a foreign corporation must be distinguishable in the records of the secretary of state from:

(a) the corporate name of a nonprofit or business corporation incorporated or authorized to transact business in this state;

(b) a corporate name reserved or registered under 35-1-309, 35-1-311, 35-2-306, or 35-2-307;

(c) the fictitious name of another foreign business or nonprofit corporation authorized to transact business in this state;

(d) the corporate name of a domestic corporation that has dissolved, but distinguishable only for a period of 120 days after the effective date of dissolution; and

(e) any assumed business name, limited partnership name, limited liability company name, trademark, or service mark registered or reserved with the secretary of state.

(3) A foreign corporation may apply to the secretary of state for authorization to use in this state the name of another corporation, incorporated or authorized to transact business in this state, that is not distinguishable in the records of the secretary of state from the name applied for. The secretary of state shall authorize use of the name applied for if:

(a) the other corporation consents to the use in writing and submits an undertaking in a form satisfactory to the secretary of state to change its name to a name that is distinguishable in the records of the secretary of state from the name of the applying corporation; or

(b) the applicant delivers to the secretary of state a certified copy of a final judgment of a court of competent jurisdiction establishing the applicant's right to use the name applied for in this state.

(4) A foreign corporation may use in this state the name, including the fictitious name, of another domestic or foreign business or nonprofit corporation that is used in this state if the other corporation is incorporated or authorized to transact business in this state and the foreign corporation:

(a) has merged with the other corporation;

(b) has been formed by reorganization of the other corporation; or

(c) has acquired all or substantially all of the assets, including the corporate name, of the other corporation.

(5) If a foreign corporation authorized to transact business in this state changes its corporate name to one that does not satisfy the requirements of 35-2-305, it may not transact business in this state under the changed name until it adopts a name satisfying the requirements of 35-2-305 and obtains an amended certificate of authority under 35-2-823.

History: En. Sec. 152, Ch. 411, L. 1991; amd. Sec. 176, Ch. 411, L. 1991; amd. Sec. 86, Ch. 120, L. 1993.

Cross-References

Assumed business names, Title 30, ch. 13, part 2.

Exclusivity of corporate name, 30-13-202.

Trademarks and service marks, Title 30, ch. 13, part 3.

Business corporation — corporate name, Title 35, ch. 1, part 3.

Foreign corporation — corporate name, 35-1-1031.

Nonprofit corporation — corporate name, 35-2-305.

Fees, 35-2-1003.

Acquisition of new name by dissolved corporation upon reinstatement, 35-6-203.

35-2-827. Registered office and registered agent of foreign corporation. Each foreign corporation authorized to transact business in this state shall continuously maintain in this state:

(1) a registered office with the same address as that of its registered agent; and

(2) a registered agent who may be:

(a) an individual who resides in this state and whose office is identical with the registered office;

(b) a domestic business or nonprofit corporation whose office is identical with the registered office; or

(c) a foreign business or nonprofit corporation authorized to transact business in this state whose office is identical with the registered office.

History: En. Sec. 153, Ch. 411, L. 1991.

Cross-References

Tort venue — out-of-state corporation, 25-2-122.

Agency, Title 28, ch. 10.

35-2-828. Change of registered office or registered agent of foreign corporation. (1) A foreign corporation authorized to transact business in this state may change its registered office or registered agent by delivering to the secretary of state, for filing, a statement of change that sets forth:

(a) the name of the foreign corporation;

(b) the street address and, if different, the mailing address of its current registered office;

(c) if the current registered office is to be changed, the street address and, if different, the mailing address of its new registered office;

(d) the name of its current registered agent;

(e) if the current registered agent is to be changed, the name of its new registered agent and the new agent's written consent to the appointment, either on the statement or attached to it; and

(f) the fact that after the change or changes are made, the street addresses of its registered office and the office of its registered agent will be identical.

(2) If a registered agent changes the street address of its business office, the agent may change the address of the registered office of any foreign corporation for which the agent is the registered agent by notifying the corporation in writing of the change and signing, either manually or in facsimile, and delivering to the secretary of state, for filing, a statement of change that complies with the requirements of subsection (1) and that states that the corporation has been notified of the change.

History: En. Sec. 154, Ch. 411, L. 1991.

35-2-829. Resignation of registered agent of foreign corporation. (1) The registered agent of a foreign corporation may resign as agent by signing and delivering to the secretary of state, for filing, the original and two copies of a statement of resignation. The statement of resignation may include a statement that the registered office is also discontinued.

(2) After filing the statement, the secretary of state shall attach the filing receipt to one copy and mail the copy and receipt to the registered office if the office has not been discontinued. The secretary of state shall mail the other copy to the foreign corporation at its principal office address shown in its most recent annual report.

(3) The agency is terminated, and the registered office discontinued if so provided, 31 days after the date on which the statement was filed.

History: En. Sec. 155, Ch. 411, L. 1991.

35-2-830. Service of process on foreign corporations. Service of process on a foreign corporation must be effected upon the persons and in the manner provided for by the Montana Rules of Civil Procedure.

History: En. Sec. 156, Ch. 411, L. 1991.

Cross-References

Service of process, Rule 4D, M.R.Civ.P. (see Title 25, ch. 20).

35-2-831. Withdrawal of foreign corporation. (1) A foreign corporation authorized to transact business in this state may not withdraw from this state until it obtains a certificate of withdrawal from the secretary of state.

(2) A foreign corporation authorized to transact business in this state may apply for a certificate of withdrawal by delivering an application to the secretary of state for filing. The application must set forth:

(a) the name of the foreign corporation and the name of the state or country under whose law it is incorporated;

(b) the fact that it is not transacting business in this state and that it surrenders its authority to transact business in this state;

(c) the fact that it revokes the authority of its registered agent to accept service on its behalf and appoints the secretary of state as its agent for service of process in any proceeding based on a cause of action arising during the time it was authorized to do business in this state;

(d) a mailing address to which the secretary of state may mail a copy of any process served on him under subsection (2)(c); and

(e) a commitment to notify the secretary of state, in the future, of any change in the mailing address.

History: En. Sec. 157, Ch. 411, L. 1991.

35-2-832. Grounds for revocation. (1) The secretary of state may commence a proceeding under 35-2-833 to revoke the certificate of authority of a foreign corporation authorized to transact business in this state if:

(a) the foreign corporation does not deliver the annual report to the secretary of state within 90 days after it is due;

(b) the foreign corporation does not pay within 90 days after they are due any franchise taxes or penalties imposed by this chapter or other law;

(c) the foreign corporation is without a registered agent or registered office in this state for 90 days or more;

(d) the foreign corporation does not inform the secretary of state under 35-2-828 or 35-2-829 that its registered agent or registered office has changed, that its registered agent has resigned, or that its registered office has been discontinued, within 90 days of the change, resignation, or discontinuance;

(e) an incorporator, director, officer, or agent of the foreign corporation signed a document that the person knew was false in any material respect, with the intent that the document be delivered to the secretary of state for filing; or

(f) the secretary of state receives a duly authenticated certificate from the secretary of state or other official having custody of corporate records in the state or country under whose law the foreign corporation is incorporated, which certificate states that the foreign corporation has been dissolved or disappeared as the result of a merger.

(2) The attorney general may commence a proceeding under 35-2-833 to revoke the certificate of authority of a foreign corporation authorized to transact business in this state if:

(a) the corporation has continued to exceed or abuse the authority conferred upon it by law;

(b) the corporation is designated as a foreign public benefit corporation and its corporation assets in this state are being misapplied or wasted; or

(c) the corporation is designated as a foreign public benefit corporation and it is no longer able to carry out its purpose.

History: En. Sec. 158, Ch. 411, L. 1991.

35-2-833. Procedure for and effect of revocation. (1) The secretary of state, upon determining that one or more grounds exist under 35-2-832 for revocation of a certificate of authority, shall mail to the foreign corporation written notice of that determination under 35-2-830.

(2) The attorney general, upon determining that one or more grounds exist under 35-2-832(2) for revocation of a certificate of authority, shall request the secretary of state to serve, and the secretary of state shall serve, the foreign corporation with written notice of that determination under 35-2-830.

(3) If the foreign corporation does not correct each ground for revocation or demonstrate to the reasonable satisfaction of the secretary of state or attorney general that each ground for revocation determined by the secretary of state or attorney general does not exist within 60 days after mailing the notice or after service of the notice is perfected under 35-2-830, the secretary of state may revoke the foreign corporation's certificate of authority by signing a certificate of revocation that states the ground or grounds for revocation and the effective date of the revocation. The secretary of state shall file the original of the certificate and mail a copy to the foreign corporation.

(4) The authority of a foreign corporation to transact business in this state ceases on the date shown on the certificate revoking its certificate of authority.

(5) Revocation of a foreign corporation's certificate of authority does not terminate the authority of the registered agent of the corporation.

History: En. Sec. 159, Ch. 411, L. 1991; amd. Sec. 6, Ch. 249, L. 1993.

Cross-References

Appeal of failure to file certificate, 35-2-1110.

35-2-834. Appeal from revocation. (1) A foreign corporation may appeal the secretary of state's revocation of its certificate of authority to the district court for the first judicial district within 30 days after the service of the certificate of revocation is perfected under 35-2-830. The foreign corporation shall appeal by petitioning the court to set aside the revocation and attaching to the petition copies of its certificate of authority and the secretary of state's certificate of revocation.

(2) The court may summarily order the secretary of state to reinstate the certificate of authority or may take any other action the court considers appropriate.

(3) The court's final decision may be appealed as in other civil proceedings.

History: En. Sec. 160, Ch. 411, L. 1991.

Part 9

Annual Report — Corporate Records

35-2-901. Repealed. Sec. 174, Ch. 411, L. 1991.

History: En. Sec. 81, Ch. 198, L. 1967; R.C.M. 1947, 15-2381; amd. Sec. 2, Ch. 153, L. 1989.

35-2-902. Repealed. Sec. 174, Ch. 411, L. 1991.

History: En. Sec. 82, Ch. 198, L. 1967; R.C.M. 1947, 15-2382; amd. Sec. 3, Ch. 78, L. 1979.

35-2-903. Repealed. Sec. 174, Ch. 411, L. 1991.

History: En. Sec. 85, Ch. 198, L. 1967; R.C.M. 1947, 15-2385.

35-2-904. Annual report for secretary of state. (1) Each domestic corporation and each foreign corporation authorized to transact business in this state shall deliver to the secretary of state, for filing, an annual report on a form prescribed and furnished by the secretary of state that sets forth:

(a) the name of the corporation and the state or country under whose law it is incorporated;

(b) the address of its registered office and the name of its registered agent at the office in this state;

(c) the address of its principal office;

(d) the names and business or residence addresses of its directors and principal officers;

(e) a brief description of the nature of its activities; and

(f) whether or not it has members.

(2) The information in the annual report must be current on the date the annual report is executed on behalf of the corporation.

(3) The first annual report must be delivered to the secretary of state between January 1 and April 15 of the year following the calendar year in which a domestic corporation was incorporated or a foreign corporation was authorized to transact business. Subsequent annual reports must be delivered to the secretary of state between January 1 and April 15.

(4) If an annual report does not contain the information required by this section, the secretary of state shall promptly notify the reporting domestic or foreign corporation in writing and return the report to it for correction. If the report is corrected to contain the information required by this section and delivered to the secretary of state within 30 days after the effective date of notice, it is considered to be timely filed.

History: En. Sec. 168, Ch. 411, L. 1991.

35-2-905 reserved.

35-2-906. Corporate records. (1) A corporation shall keep as permanent records minutes of all meetings of its members and board of directors, a record of all actions taken by the members or directors without a meeting, and a record of all actions taken by committees of the board of directors as authorized by 35-2-433(4).

(2) A corporation shall maintain appropriate accounting records.

(3) A corporation or its agent shall maintain a record of its members in a form that permits preparation of a list of the names and addresses of all members, in alphabetical order by class, showing the number of votes each member is entitled to cast.

(4) A corporation shall maintain its records in written form or in another form capable of conversion into written form within a reasonable time.

(5) A corporation shall keep a copy of the following records at its principal office or a location from which the records may be recovered within 2 business days:

(a) its articles or restated articles of incorporation and all amendments to them currently in effect;

(b) its bylaws or restated bylaws and all amendments to them currently in effect;

(c) resolutions adopted by its board of directors relating to the characteristics, qualifications, rights, limitations, and obligations of members or any class or category of members;

(d) the minutes of all meetings of members and the records of all actions approved by the members for the past 3 years;

(e) the financial statements available to members for the past 3 years under 35-2-911;

(f) a list of the names and business or home addresses of its current directors and officers; and

(g) its most recent annual report delivered to the secretary of state under 35-2-904.

History: En. Sec. 161, Ch. 411, L. 1991; amd. Sec. 57, Ch. 10, L. 1993.

35-2-907. Inspection of records by members. (1) Subject to 35-2-908(3) and subsection (5) of this section, a member is entitled to inspect and copy, at a reasonable time and location specified by the corporation, any of the records of the corporation described in 35-2-906(5) if the member gives the corporation written notice or a written demand at least 5 business days before the date on which the member wishes to inspect and copy.

(2) Subject to subsection (5), a member is entitled to inspect and copy, at a reasonable time and reasonable location specified by the corporation, any of the following records of the corporation if the member meets the requirements of subsection (3) and gives the corporation written notice at least 5 business days before the date on which the member wishes to inspect and copy:

(a) excerpts from any records required to be maintained under 35-2-906(1), to the extent not subject to inspection under subsection (1);

(b) accounting records of the corporation; and

(c) subject to 35-2-910, the membership list.

(3) A member may inspect and copy the records identified in subsection (2) only if:

(a) the member's demand is made in good faith and for a proper purpose;

(b) the member describes with reasonable particularity the purpose and the records the member desires to inspect; and

(c) the records are directly connected with this purpose.

(4) This section does not affect:

(a) the right of a member to inspect records under 35-2-535 or, if the member is in litigation with the corporation, to the same extent as any other litigant; or

(b) the power of a court, independent of this chapter, to compel the production of corporate records for examination.

(5) The articles or bylaws of a religious corporation may limit or abolish the right of a member under this section to inspect and copy any corporate record.

History: En. Sec. 162, Ch. 411, L. 1991.

35-2-908. Scope of inspection rights. (1) A member's agent or attorney has the same inspection and copying rights as the member the agent or attorney represents.

(2) The right to copy records under 35-2-907 includes, if reasonable, the right to receive copies made by photographic, xerographic, or other means.

(3) The corporation may impose a reasonable charge, covering the costs of labor and material, for copies of documents provided to the member. The charge may not exceed the estimated cost of production or reproduction of the records.

(4) The corporation may comply with a member's demand to inspect the record of members under 35-2-907(2)(c) by providing the member with a list of

its members that was compiled no earlier than the date of the member's demand.

History: **En. Sec. 163, Ch. 411, L. 1991.**

35-2-909. Court-ordered inspection. (1) If a corporation does not allow a member who complies with 35-2-907(1) to inspect and copy any records required by that subsection to be available for inspection, the district court, for the judicial district of the county where the corporation's principal office, or, if none in this state, its registered office, is located may summarily order inspection and copying of the records demanded at the corporation's expense upon application of the member.

(2) If a corporation does not within a reasonable time allow a member to inspect and copy any other record, the member who complies with 35-2-907(2) and (3) may apply to the district court, for the judicial district of the county where the corporation's principal office or, if the principal office is not located in this state, the county where its registered office is located for an order to permit inspection and copying of the records demanded. The court shall dispose of an application under this subsection on an expedited basis.

(3) If the court orders inspection and copying of the records demanded, it shall also order the corporation to pay the member's costs, including reasonable attorney fees, incurred to obtain the order unless the corporation proves that it refused inspection in good faith because it had a reasonable basis for doubt about the right of the member to inspect the records demanded.

(4) If the court orders inspection and copying of the records demanded, it may impose reasonable restrictions on the use or distribution of the records by the demanding member.

History: **En. Sec. 164, Ch. 411, L. 1991.**

35-2-910. Limitations on use of membership list. (1) Without consent of the board, a membership list or any part of it may not be obtained or used by a person for any purpose unrelated to a member's interest as a member.

(2) Without limiting the generality of the provisions of subsection (1), without the consent of the board a membership list or any part of it may not be:

(a) used to solicit money or property unless the money or property will be used solely to solicit the votes of the members in an election to be held by the corporation;

(b) used for any commercial purpose; or

(c) sold to or purchased by any person.

History: **En. Sec. 165, Ch. 411, L. 1991.**

35-2-911. Financial statements for members. Upon the written request of any member of the corporation, the corporation shall mail to the member its most recent financial statements showing in reasonable detail its assets and liabilities and the results of the operations.

History: **En. Sec. 166, Ch. 411, L. 1991.**

35-2-912. Report of indemnification to members. If a corporation indemnifies or advances expenses to a director under 35-2-447 through 35-2-450 in connection with a proceeding by or in the right of the corporation, the corporation shall report the indemnification or advance in writing to the members with or before the notice of the next meeting of members.

History: En. Sec. 167, Ch. 411, L. 1991.

Part 10
Fees and Charges

35-2-1001. Repealed. Sec. 174, Ch. 411, L. 1991.

History: En. Sec. 83, Ch. 198, L. 1967; amd. Sec. 7, Ch. 152, L. 1969; R.C.M. 1947, 15-2383; amd. Sec. 7, Ch. 202, L. 1979; amd. Sec. 7, Ch. 119, L. 1985.

35-2-1002. Repealed. Sec. 174, Ch. 411, L. 1991.

History: En. Sec. 84, Ch. 198, L. 1967; amd. Sec. 2, Ch. 185, L. 1971; R.C.M. 1947, 15-2384.

35-2-1003. Fees for filing, copying, and services. (1) The secretary of state shall establish by rule fees for filing documents and issuing certificates as required by this chapter.

(2) The secretary of state shall by rule establish fees for copying documents, priority handling, transmitting, or filing facsimile copies and for providing computer-generated information.

(3) The fees presented under this section must be reasonably related to the costs of processing the documents and preparing and providing the services. The secretary of state shall maintain records sufficient to support the fees established under this section.

History: En. Sec. 7, Ch. 411, L. 1991.

Cross-References

Fees relating to business corporations, 35-1-1206.

Certification of existence, 35-2-1112.

Part 11
Secretary of State

35-2-1101 through 35-2-1106. Repealed. Sec. 174, Ch. 411, L. 1991.

Compiler's Comments

Histories of Repealed Sections:

35-2-1101. En. Sec. 87, Ch. 198, L. 1967; R.C.M. 1947, 15-2387.

35-2-1102. En. Sec. 90, Ch. 198, L. 1967; R.C.M. 1947, 15-2390.

35-2-1103. En. Sec. 88, Ch. 198, L. 1967; R.C.M. 1947, 15-2388.

35-2-1104. En. Sec. 37, Ch. 198, L. 1967; R.C.M. 1947, 15-2337(part).

35-2-1105. En. Sec. 89, Ch. 198, L. 1967; R.C.M. 1947, 15-2389.

35-2-1106. En. Sec. 1, Ch. 256, L. 1981.

35-2-1107. Secretary of state — powers — rulemaking. (1) The secretary of state has the power reasonably necessary to perform the duties required of the secretary of state's office by this chapter.

(2) The secretary of state may adopt rules to perform the duties required of the secretary of state under this chapter, including establishing necessary fees.

History: En. Sec. 15, Ch. 411, L. 1991.

35-2-1108. Forms. (1) The secretary of state may by rule prescribe and furnish on request forms or computer formats for:

(a) an application for a certificate of existence;

(b) a foreign corporation's application for a certificate of authority to transact business in this state;

(c) a foreign corporation's application for a certificate of withdrawal;

(d) the annual report; and

(e) other documents required or permitted to be filed by this chapter.

(2) If the secretary of state so requires, use of any of the forms or formats listed in subsection (1) is mandatory.

(3) The secretary of state may by rule prescribe and furnish on request forms or computer formats for other documents required or permitted to be filed by this chapter, but their use is not mandatory.

History: En. Sec. 6, Ch. 411, L. 1991.

35-2-1109. Filing duty of secretary of state. (1) If a document delivered to the office of the secretary of state for filing satisfies the applicable requirements of 35-2-119 and 35-2-120, the secretary of state shall file it.

(2) The secretary of state shall file a document by stamping or otherwise endorsing "Filed", together with the secretary of state's name, official title, and the date and the time of receipt, on the original, the copy of the document, and the receipt for the filing fee. Except as provided in 35-2-314 and 35-2-830, after filing a document, the secretary of state shall deliver the document copy to the domestic or foreign corporation or its representative, together with the filing fee receipt or acknowledgment of receipt if no fee is required.

(3) Upon refusing to file a document, the secretary of state shall return it to the domestic or foreign corporation or its representative within 10 days after the document was delivered, together with a brief written explanation of the reason or reasons for the refusal.

(4) The secretary of state's duty concerning the documents under this section is ministerial. Filing or refusal to file a document does not:

(a) affect the validity or invalidity of the document in whole or in part;

(b) relate to the correctness or incorrectness of information contained in the document; or

(c) create a presumption that the document is valid or invalid or that information contained in the document is correct or incorrect.

History: En. Sec. 10, Ch. 411, L. 1991.

35-2-1110. Appeal from secretary of state's refusal to file document. (1) If the secretary of state refuses to file a document delivered for filing to the secretary of state's office, the domestic or foreign corporation may appeal the refusal to the district court for the first judicial district. The appeal is commenced by petitioning the court to compel the filing of the document and by attaching to the petition the document and the secretary of state's explanation of the refusal to file.

(2) The court may summarily order the secretary of state to file the document or take other action the court considers appropriate.

(3) The court's final decision may be appealed as in other civil proceedings.

History: En. Sec. 11, Ch. 411, L. 1991.

Cross-References

Contested cases, Title 2, ch. 4, part 6.

Judicial review of contested cases, Title 2, ch. 4, part 7.

35-2-1111. Evidentiary effect of copy of filed document. A certificate attached to a copy of a document, bearing the secretary of state's signature, which may be in facsimile, and the seal of this state, is conclusive evidence that the original document is on file with the secretary of state.

History: En. Sec. 12, Ch. 411, L. 1991.

Cross-References

Self-authentication, Rule 902, M.R.Ev. (see Title 26, ch. 10).

Admissibility of duplicates — copies of certain entries, Rule 1003, M.R.Ev. (see Title 26, ch. 10).

Public records, Rule 1005, M.R.Ev. (see Title 26, ch. 10).

35-2-1112. Certificate of existence. (1) A person may apply to the secretary of state to furnish a certificate of existence for a domestic or foreign corporation.

(2) The certificate of existence must set forth:

(a) the domestic corporation's corporate name or the foreign corporation's corporate name used in this state;

(b) (i) that the domestic corporation is incorporated under the laws of this state, the date of its incorporation, and the period of its duration if less than perpetual; or

(ii) that the foreign corporation is authorized to transact business in this state;

(c) that all fees, taxes, and penalties owed to this state have been paid, if:

(i) payment is reflected in the records of the secretary of state; and

(ii) nonpayment affects the good standing of the domestic or foreign corporation;

(d) that its most recent annual report required by 35-2-904 has been delivered to the secretary of state;

(e) that articles of dissolution have not been filed; and

(f) other facts of record in the office of the secretary of state that may be requested by the applicant.

(3) Subject to any qualification stated in the certificate, a certificate of existence issued by the secretary of state may be relied upon as conclusive evidence that the domestic or foreign corporation is in good standing in this state.

History: En. Sec. 13, Ch. 411, L. 1991.

Part 12

Reinstatement (Repealed. Sec. 174, Ch. 411, L. 1991)

Part Compiler's Comments

Histories of Repealed Sections:

35-2-1201. En. Sec. 2, Ch. 256, L. 1981; amd. Sec. 50, Ch. 131, L. 1983; amd. Sec. 29, Ch. 174, L. 1983.

35-2-1202. En. Sec. 3, Ch. 256, L. 1981.

35-2-1203. En. Sec. 4, Ch. 256, L. 1981.

Part 13

Derivative Actions

35-2-1301. Standing. (1) For purposes of this part, "derivative proceeding" means a civil suit in the right of a domestic corporation or, to the extent provided in 35-2-1307, in the right of a foreign corporation.

(2) A derivative proceeding may be commenced or maintained by a complainant who is:

(a) a director at the time of the bringing of the proceeding; or

(b) a member or members having 5% or more of the voting power or by 50 members, whichever is less. Each member must be a member at the time of the proceeding, including the time of the complained act or omission.

History: En. Sec. 50, Ch. 411, L. 1991.

35-2-1302. Demand. A complainant may not commence a derivative proceeding until:

(1) a written demand has been made upon the corporation to take suitable action;

(2) 90 days have expired from the date the demand was made, unless the complainant has earlier been notified that the demand has been rejected by the corporation or unless irreparable injury to the corporation would result by waiting for the expiration of the 90-day period; and

(3) the complainant has notified the attorney general prior to commencing a proceeding if the proceeding involves a public benefit corporation or assets held in charitable trust by a mutual benefit corporation. Notification of the attorney general must be made by mailing the attorney general a copy of the complaint.

History: En. Sec. 51, Ch. 411, L. 1991.

35-2-1303. Stay of proceedings. If the corporation commences an inquiry into the allegations made in the demand or complaint, the court may stay any derivative proceeding for any period the court considers appropriate.

History: En. Sec. 52, Ch. 411, L. 1991.

35-2-1304. Dismissal. (1) The court shall dismiss a derivative proceeding on motion by the corporation if one of the groups specified in subsection (2) or (6) has determined in good faith, after conducting a reasonable inquiry upon which its conclusions are based, that the maintenance of the derivative proceeding is not in the best interests of the corporation.

(2) Unless a panel is appointed pursuant to subsection (6), the determination in subsection (1) must be made by:

(a) a majority vote of independent directors present at a meeting of the board of directors if independent directors constitute a quorum; or

(b) a majority vote of a committee consisting of two or more independent directors appointed by majority vote of independent directors present at a meeting of the board of directors, whether or not the independent directors constitute a quorum.

(3) None of the following may by itself cause a director to be considered not independent for purposes of this section:

(a) the nomination or election of the director by persons who are defendants in the derivative proceeding or against whom action is demanded;

(b) the naming of the director as a defendant in the derivative proceeding or as a defendant against whom action is demanded; or

(c) the approval by the director of the act being challenged in the derivative proceeding or demand if the act did not result in personal benefit to the director.

(4) If a derivative proceeding is commenced after a determination has been made rejecting a demand by a complainant, the complaint must allege with particularity facts establishing either that a majority of the board of directors did not consist of independent directors at the time the determination was made or that the requirements of subsection (1) have not been met.

(5) If a majority of the board of directors does not consist of independent directors at the time the determination is made, the corporation has the burden of proving that the requirements of subsection (1) have been met. If a majority of the board of directors consists of independent directors at the time the determination is made, the complainant has the burden of proving that the requirements of subsection (1) have not been met.

(6) Upon motion by the corporation, the court may appoint a panel of one or more independent persons to make a determination of whether the maintenance of the derivative proceeding is in the best interests of the corporation. In this case, the plaintiff has the burden of proving that the requirements of subsection (1) have not been met.

History: En. Sec. 53, Ch. 411, L. 1991.

35-2-1305. Discontinuance or settlement — notice. A derivative proceeding may not be discontinued or settled without the court's approval. If the court determines that a proposed discontinuance or settlement will substantially affect the interests of the corporation's members or a class of members, the court shall direct that notice be given to the members affected.

History: En. Sec. 54, Ch. 411, L. 1991.

35-2-1306. Payment of expenses. On termination of the derivative proceeding, the court may order:

(1) the corporation to pay the complainant's reasonable expenses, including attorney fees, incurred in the proceeding if it finds that the proceeding has resulted in a substantial benefit to the corporation; or

(2) the complainant to pay any defendant's reasonable expenses, including attorney fees, incurred in defending the proceeding if it finds that the proceeding was commenced or maintained without reasonable cause or for an improper purpose.

History: En. Sec. 55, Ch. 411, L. 1991.

35-2-1307. Applicability to foreign corporations. In a derivative proceeding in the right of a foreign corporation, the matter covered by this part is governed by the laws of the jurisdiction of incorporation of the foreign corporation, except for 35-2-1303, 35-2-1305, and 35-2-1306.

History: En. Sec. 56, Ch. 411, L. 1991.

Part 14

Distributions

35-2-1401. Prohibited distributions. Except as authorized by 35-2-1402, a corporation may not make any distributions.

History: En. Sec. 132, Ch. 411, L. 1991.

35-2-1402. Authorized distributions. (1) A mutual benefit corporation may purchase its memberships if after the purchase is completed:

(a) the corporation would be able to pay its debts as they become due in the usual course of its activities; and

(b) the corporation's total assets would at least equal the sum of its total liabilities.

(2) Corporations may make distributions upon dissolution in conformity with part 7 of this chapter.

History: En. Sec. 133, Ch. 411, L. 1991.

CHAPTER 3

RELIGIOUS CORPORATIONS SOLE

Part 1 — General

35-3-101. Short title.
35-3-102. Applicability.
35-3-103. Repeal of prior act not to affect rights accrued or liabilities incurred.

Part 2 — Formation and Operation

35-3-201. When corporation sole may be created.
35-3-202. Articles of incorporation.
35-3-203. Effect of issuance of certificate of incorporation.
35-3-204. Unauthorized assumption of corporate powers — liability.
35-3-205. Powers of corporation sole.
35-3-206. Amendment of articles of incorporation.
35-3-207. Succession.
35-3-208. Board of advisors or consultors — interim powers.
35-3-209. Annual report.
35-3-210. Registered agent — registered office.

Chapter Cross-References

Tax-exempt property, Title 15, ch. 6, part 2.

Montana Nonprofit Corporation Act, Title 35, ch. 2.

Part 1
General

35-3-101. Short title. This chapter shall be known and may be cited as the "Montana Religious Corporation Sole Act".

History: En. Sec. 1, Ch. 301, L. 1967; R.C.M. 1947, 15-2401.

35-3-102. Applicability. The provisions of this chapter shall apply to corporations sole existing on December 31, 1968, or formed in accordance herewith and the Montana Nonprofit Corporation Act shall apply thereto only when not inconsistent with the provisions of this chapter. Foreign corporations sole will likewise be governed by the applicable provisions of the Montana Nonprofit Corporation Act when not inconsistent with the provisions of this chapter.

History: En. Sec. 2, Ch. 301, L. 1967; R.C.M. 1947, 15-2402(part).

Cross-References

Montana Nonprofit Corporation Act, Title 35, ch. 2.

Nonprofit foreign corporations, Title 35, ch. 2, part 8.

Management of institutional funds, Title 72, ch. 30.

35-3-103. Repeal of prior act not to affect rights accrued or liabilities incurred. The repeal of a prior act by this chapter shall not affect any right accrued or established or any liability or penalty incurred under the provisions of such act prior to the repeal thereof.

History: En. Sec. 12, Ch. 301, L. 1967; R.C.M. 1947, 15-2412.

Cross-References

Nonmunicipal corporations, Art. XIII, sec. 1, Mont. Const.

Part 2

Formation and Operation

Part Cross-References

Formation, articles of incorporation, and bylaws of business corporations, Title 35, ch. 1, part 2.

Formation, articles of incorporation, and bylaws of nonprofit corporations, Title 35, ch. 2, part 2.

Formation of cemetery associations, Title 35, ch. 20, part 1.

35-3-201. When corporation sole may be created. Whenever the rules or discipline of any religious denomination, society, or church permit or require the estate, property, temporalities, and business thereof to be held in the name of or managed by a bishop, chief priest, or presiding elder, it shall be lawful for such bishop, chief priest, or presiding elder of such religious denomination, society, or church to become a corporation sole in the manner herein prescribed.

History: En. Sec. 3, Ch. 301, L. 1967; R.C.M. 1947, 15-2403.

35-3-202. Articles of incorporation. (1) The articles of incorporation shall set forth:

(a) the name of the corporation;

(b) the period of duration, which may be perpetual;

(c) the name of the religious denomination, society, or church creating the corporation sole;

(d) the name of the bishop, chief priest, or presiding elder whose office is incorporated under this chapter, together with a designation of the boundaries of the territory over which he presides or over which his jurisdiction extends and the facts authorizing such incorporation;

(e) the manner in which any vacancy occurring in the incumbency of such bishop, chief priest, or presiding elder, as required by the rules or discipline of such religious denomination, society, or church, shall be filled;

(f) any provisions, not inconsistent with law, which the incorporator elects to set forth in the articles of incorporation for the regulation of the internal affairs of the corporation, including any provisions for distribution of assets on dissolution or final liquidation;

(g) the address of its initial registered office and the name of its initial registered agent at such address;

(h) the name and address of the incorporator.

(2) It shall not be necessary to set forth in the articles of incorporation any of the corporate powers enumerated in this chapter.

(3) The articles shall be verified by affidavit of the incorporator, and he shall also file the original or a copy or translation of his commission, certificate, or letters of appointment as such bishop, chief priest, or presiding elder, duly attested, and his affidavit that the same is a true copy or translation shall be deemed as sufficient attestation thereof.

History: **En. Sec. 4, Ch. 301, L. 1967; R.C.M. 1947, 15-2404.**

35-3-203. Effect of issuance of certificate of incorporation. (1) Upon filing the articles of incorporation in the office of the secretary of state with proof of appointment or election of such bishop, chief priest, or presiding elder, the secretary of state must issue to the corporation over the great seal of the state a certificate of incorporation.

(2) Upon the issuance of this certificate, the corporate existence shall begin and such certificate of incorporation shall be conclusive evidence that all conditions precedent required to be performed by the incorporator have been complied with and that the corporation has been incorporated under this chapter, except as against the state in a proceeding to cancel or revoke the certificate of incorporation or for involuntary dissolution of the corporation.

History: **En. Sec. 5, Ch. 301, L. 1967; R.C.M. 1947, 15-2405.**

35-3-204. Unauthorized assumption of corporate powers — liability. All persons who assume to act as a corporation hereunder without authority so to do shall be jointly and severally liable for all debts and liabilities incurred or arising as the result thereof.

History: **En. Sec. 11, Ch. 301, L. 1967; R.C.M. 1947, 15-2411.**

35-3-205. Powers of corporation sole. Every corporation sole organized under the provisions of this chapter, for the purpose of the trust hereinafter mentioned, shall have power:

(1) to continue to exist perpetually by its corporate name unless a limited period of duration is stated in its articles of incorporation;

(2) to sue and be sued, complain and defend, in its corporate name;

(3) to have a corporate seal which may be altered at pleasure and to use the same by causing it or a facsimile thereof to be impressed or affixed or in any other manner reproduced;

(4) to purchase, take, receive, lease, take by gift, devise, or bequest or otherwise acquire, own, hold, improve, use, and otherwise deal in and with real or personal property or any interest therein, wherever situated, provided that all such property shall be in trust for the use, purpose, and benefit of such religious denomination, society, or church for which and in whose behalf such corporation sole is organized;

(5) to sell, convey, mortgage, pledge, lease, exchange, transfer, and otherwise dispose of all or any part of its property and assets;

(6) to lend money to its employees other than its officers and otherwise assist its employees and officers;

(7) to purchase, take, receive, subscribe for, or otherwise acquire, own, hold, vote, use, employ, sell, mortgage, lend, pledge, or otherwise dispose of and otherwise use and deal in and with shares or other interests in or obligations of other domestic or foreign corporations, whether for profit or not for profit,

associations, partnerships, or individuals or direct or indirect obligations of the United States or of any other government, state, territory, governmental district, or municipality or of any instrumentality thereof;

(8) to make contracts and incur liabilities, borrow money at such rates of interest as the corporation may determine, issue its notes, bonds, and other obligations, and secure any of its obligations by mortgage or pledge of all or any of its property, franchises, and income;

(9) to lend money for its corporate purposes, invest and reinvest its funds, and take and hold real and personal property as security for the payment of funds so loaned or invested;

(10) to conduct its affairs, carry on its operations, and have offices and exercise the powers granted by this chapter in any state, territory, district, or possession of the United States or in any foreign country;

(11) to elect or appoint officers and agents of the corporation, including attorneys-in-fact, and to define their duties and fix their compensation;

(12) to make and alter bylaws, not inconsistent with its articles of incorporation or with the laws of this state, for the administration and regulation of the affairs of the corporation;

(13) unless otherwise provided in the articles of incorporation, to make donations for the public welfare or for charitable, religious, scientific, or educational purposes;

(14) to indemnify any officer or agent or any person who may have served at its request as an officer or agent or as a director or officer of another corporation in which it owns shares of capital stock or of which it is a creditor against claims, liabilities, expenses, and costs necessarily incurred by him in connection with the defense, compromise, or settlement of any action, suit, or proceeding, civil or criminal, in which he is made a party by reason of being or having been such director or officer, except in relation to matters as to which he shall be adjudged in such action, suit, or proceeding to be liable for negligence or misconduct in the performance of duty to the corporation; and to make any other indemnification that shall be authorized by the articles of incorporation or by any bylaw or resolution promulgated by the incorporator or his successor;

(15) to pay pensions and retirement benefits and establish pension plans, pension trusts, insurance plans, and incentive plans for all or any of its officers and employees;

(16) to cease its corporate activities and surrender its corporate franchise;

(17) to have and exercise all powers necessary or convenient to effect any or all of the purposes for which the corporation is organized.

History: En. Sec. 6, Ch. 301, L. 1967; R.C.M. 1947, 15-2406.

Cross-References

U.C.C. — investment securities, Title 30, ch. 8.

Securities Act of Montana, Title 30, ch. 10.

Exempt securities, 30-10-104.

35-3-206. Amendment of articles of incorporation. (1) Whenever any bishop, chief priest, or presiding elder shall have filed in the office of the secretary of state articles of incorporation, under the provisions of an act entitled "An Act Authorizing and Regulating the Incorporation of Sole Corporations and Defining Their Powers", approved February 27, 1899, or amendments thereto or under this chapter, such corporation sole may amend its articles of incorporation from time to time in any and as many respects as may be desired, so long as its articles of incorporation as amended contain only such provisions as are lawful under this chapter.

(2) Such articles of amendment shall be promulgated by the incorporator or his successor by setting forth a statement of the facts authorizing such amendment and the date upon which said amendment was promulgated, and his affidavit that the same is a true copy or translation thereof shall be deemed a sufficient attestation thereof.

History: En. Sec. 10, Ch. 301, L. 1967; R.C.M. 1947, 15-2410.

35-3-207. Succession. (1) In the event of the death or resignation from office of any bishop, chief priest, or presiding elder or of his transfer or removal therefrom by the person or body having the authority to remove him, his successor in office shall succeed to the powers, rights, and obligations of the office and shall become vested with the title to the property with like power and authority over the same and subject to all the legal liabilities and obligations with reference thereto.

(2) Succession shall be effected when the successor shall file in the office of the secretary of state the original or a copy or translation of his commission, certificate, or letters of appointment as such bishop, chief priest, or presiding elder, duly attested, and his affidavit that the same is a true copy or translation shall be deemed sufficient attestation thereof.

History: En. Sec. 7, Ch. 301, L. 1967; R.C.M. 1947, 15-2407.

35-3-208. Board of advisors or consultors — interim powers. The bishop, chief priest, or presiding elder of the corporation sole created hereby may appoint a board of advisors or consultors consisting of at least four persons of legal age and otherwise qualified according to the rules or discipline of the denomination, society, or church, which board, in addition to its advisory function, shall exercise the powers of the corporation upon the death, resignation, transfer, removal, or deprivation of office of the bishop, chief priest, or presiding elder and which shall elect an administrator to which it may delegate the executive and administrative functions of the corporation during the interim and until the successor bishop, chief priest, or presiding elder is appointed, elected, or qualified according to the rules or discipline of the denomination, society, or church.

History: En. Sec. 8, Ch. 301, L. 1967; amd. Sec. 1, Ch. 113, L. 1977; R.C.M. 1947, 15-2408.

35-3-209. Annual report. (1) Each corporation, subject to the provisions of this chapter, shall file within the time and in the manner prescribed by the Montana Nonprofit Corporation Act, an annual report on forms or in a computerized format prescribed by the secretary of state, setting forth:

(a) the name of the corporation and the name of the present incumbent chief corporate officer;

(b) the address of the registered office of the corporation in Montana and the name of its registered agent in Montana at that address;

(c) the names and respective addresses of the present members of the board of advisers or consultors of the corporation.

(2) The report must be executed by the chief corporate officer or by an attorney-in-fact acting under a power of attorney filed with the secretary of state by the chief corporate officer.

History: En. Sec. 9, Ch. 301, L. 1967; R.C.M. 1947, 15-2409; amd. Sec. 3, Ch. 153, L. 1989.

Cross-References

Corporations subject to provision, 35-3-102.

35-3-210. Registered agent — registered office. (1) A corporation sole organized under the provisions of this chapter shall maintain a corporate office in this state and shall appoint a resident registered agent.

(2) Unless the registered agent signed the document making the appointment, the appointment of a registered agent or a successor registered agent on whom process may be served is not effective until the agent delivers a statement in writing to the secretary of state accepting the appointment.

History: En. Sec. 16, Ch. 229, L. 1999.

Compiler's Comments

Effective Date: Section 25, Ch. 229, L. 1999, provided that this section is effective on passage and approval. Approved April 2, 1999.

CHAPTER 4

MONTANA PROFESSIONAL CORPORATION ACT

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Chapter Cross-References

Professional and occupational licensing, Title 37.

Part 1
General

35-4-101 through 35-4-107. Repealed. Sec. 24, Ch. 399, L. 1983.

Compiler's Comments

Histories of Repealed Sections:

35-4-101. En. Sec. 4, Ch. 161, L. 1963; R.C.M. 1947, 15-2102.

35-4-102. En. Sec. 3, Ch. 161, L. 1963; R.C.M. 1947, 15-2101.

35-4-103. En. Sec. 5, Ch. 161, L. 1963; amd. Sec. 1, Ch. 56, L. 1965; amd. Sec. 1, Ch. 10, L. 1967; R.C.M. 1947, 15-2103.

35-4-104. En. Sec. 6, Ch. 161, L. 1963; R.C.M. 1947, 15-2104.

35-4-105. En. Sec. 16, Ch. 161, L. 1963; R.C.M. 1947, 15-2114(part).

35-4-106. En. Sec. 19, Ch. 161, L. 1963; R.C.M. 1947, 15-2116.

35-4-107. En. Sec. 7, Ch. 161, L. 1963; amd. Sec. 9, Ch. 62, L. 1977; R.C.M. 1947, 15-2105.

35-4-108. Short title. This chapter may be cited as the "Montana Professional Corporation Act".

History: En. Sec. 1, Ch. 399, L. 1983.

35-4-109. Definitions. As used in this chapter, unless the context otherwise requires, the following definitions apply:

(1) "Disqualified person" means any natural person, corporation, partnership, fiduciary, trust, association, government agency, or other entity that for any reason is or becomes ineligible under this chapter to own shares issued by a professional corporation.

(2) "Foreign professional corporation" means a corporation for profit organized for the purpose of rendering professional services under a law other than the laws of this state.

(3) "Licensing authority" means an officer, board, agency, court, or other authority in this state that has the power to issue a license or other legal authorization to render a professional service.

(4) "Professional corporation" or "domestic professional corporation" means a corporation for profit subject to the provisions of this chapter, except a foreign professional corporation.

(5) "Professional service" means any service that may lawfully be rendered only by persons licensed under a licensing law of this state and that may not lawfully be rendered by a corporation organized under the Montana Business Corporation Act.

(6) "Qualified person" means a natural person, general partnership, or professional corporation eligible under this chapter to own shares issued by a professional corporation.

History: En. Sec. 2, Ch. 399, L. 1983.

Cross-References

Professions and Occupations, Title 37.

35-4-110. Application to existing corporations. (1) This chapter applies to each professional corporation organized prior to October 1, 1983. If such a corporation is required to amend its corporate name or purposes to comply with this chapter, it shall deliver one duly executed original and one copy of articles of amendment or restated articles of incorporation containing such amendments to the secretary of state within 90 days after October 1, 1983.

(2) Any corporation that is not a professional corporation may become subject to this chapter by delivering to the secretary of state one duly executed original and one copy of articles of amendment or restated articles of incorporation stating that the corporation elects to become subject to this chapter and containing such amendments of its corporate name or purposes as are required to comply with this chapter.

History: En. Sec. 3, Ch. 399, L. 1983.

35-4-111. Application of the Montana Business Corporation Act. The Montana Business Corporation Act applies to professional corporations, domestic and foreign, except to the extent its provisions are inconsistent with this chapter.

History: En. Sec. 4, Ch. 399, L. 1983.

Part 2

Organization and Regulation

Part Cross-References

Formation, articles of incorporation, and bylaws of business corporations, Title 35, ch. 1, part 2.

Formation, articles of incorporation, and bylaws of nonprofit corporations, Title 35, ch. 2, part 2.

Formation of religious corporations sole, Title 35, ch. 3, part 2.

Formation and operation of business trusts, Title 35, ch. 5, part 2.

Montana Limited Liability Company Act, Title 35, ch. 8.

Registration of limited liability partnerships, Title 35, ch. 10, part 7.

Formation of limited partnerships, Title 35, ch. 12, part 6.

Formation of mining partnerships, Title 35, ch. 13, part 1.

Formation, articles of incorporation, and bylaws of cooperative associations, Title 35, ch. 15, part 2.

Formation of agricultural associations, Title 35, ch. 16, part 2.

Formation of cooperative agricultural marketing associations, Title 35, ch. 17, part 2.

Formation, articles, and bylaws of rural cooperative utilities, Title 35, ch. 18, part 2.

Formation of cemetery associations, Title 35, ch. 20, part 1.

35-4-201 through 35-4-204. Repealed. Sec. 24, Ch. 399, L. 1983.

Compiler's Comments

Histories of Repealed Sections:

35-4-201. En. Sec. 14, Ch. 161, L. 1963; R.C.M. 1947, 15-2112; amd. Sec. 154, Ch. 575, L. 1981.

35-4-202. En. Sec. 11, Ch. 161, L. 1963; R.C.M. 1947, 15-2109.

35-4-203. En. Sec. 15, Ch. 161, L. 1963; R.C.M. 1947, 15-2113; amd. Sec. 8, Ch. 202, L. 1979.

35-4-204. En. Sec. 17, Ch. 161, L. 1963; R.C.M. 1947, 15-2115.

35-4-205. Purposes of corporation. Professional corporations may be organized under this chapter only for the purpose of rendering professional services and services ancillary thereto within a single profession, except that a professional corporation may be incorporated for the purpose of rendering professional services within two or more professions and for any purpose or purposes for which corporations may be organized under the Montana Business Corporation Act to the extent that such combination of professional purposes or professional and business purposes is permitted by the licensing laws and rules of this state applicable to such professions.

History: En. Sec. 6, Ch. 399, L. 1983.

35-4-206. Corporate name. The name of a domestic or foreign professional corporation:

(1) (a) except as provided in subsection (1)(b), must contain the words "professional corporation" or the abbreviation "P.C."; unless

(b) the name of a foreign corporation contains the words "professional services" or "P.S.";

(2) may not contain any word or phrase that indicates or implies that the corporation is organized for any purpose other than the purposes contained in its articles of incorporation;

(3) may not be the same as or deceptively similar to any assumed business name, limited partnership name, limited liability company name, trademark, or service mark registered or reserved with the secretary of state or to the name of any domestic corporation existing under the laws of this state, any foreign corporation authorized to transact business in this state, a name the exclusive right to which is reserved in the manner provided in the Montana Business Corporation Act, or the name of a corporation that has in effect a registration of its corporate name as provided in the Montana Business Corporation Act. This subsection does not apply if:

(a) the similarity results from the use in the corporate name of personal names of shareholders or former shareholders or of natural persons who were associated with a predecessor entity; or

(b) the corporation files with the secretary of state either the written consent of such other corporation or holder of a reserved or registered name to use the same or a deceptively similar name and one or more words are added to make such name distinguishable from such other name or a certified copy of a final decree of a court of competent jurisdiction establishing the prior right of the corporation to the use of the name in this state.

(4) must conform to rules promulgated by a licensing authority having jurisdiction of a professional service described in the articles of incorporation of the corporation.

History: En. Sec. 12, Ch. 399, L. 1983; amd. Sec. 87, Ch. 120, L. 1993; amd. Sec. 7, Ch. 249, L. 1993.

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

Assumed business names, trademarks, and related rights, Title 30, ch. 13.

Service of process on foreign corporation, 35-1-1034.

Professions and Occupations, Title 37.

35-4-207. Directors and officers. At least one-half of the combined directors and officers of a professional corporation, other than the secretary and the treasurer, must be qualified persons with respect to the corporation.

History: En. Sec. 13, Ch. 399, L. 1983.

35-4-208. Filing of articles with licensing authority. No professional corporation, domestic or foreign, may begin to render professional services in this state until it has filed a copy of its articles of incorporation with each licensing authority having jurisdiction of a type of professional service described in its articles of incorporation. Nothing in this chapter restricts or limits the authority or duty of a licensing authority with respect to natural persons rendering a professional service within the jurisdiction of the licensing authority or any law or rule pertaining to standards of professional conduct.

History: En. Sec. 5, Ch. 399, L. 1983.

35-4-209. Annual reports and statements. (1) The annual report of each domestic professional corporation and each foreign professional corporation authorized to transact business in this state filed with the secretary of state pursuant to the Montana Business Corporation Act must include a statement that all the shareholders, not less than one-half the directors, and all the officers other than the secretary and treasurer of the corporation are qualified persons with respect to the corporation.

(2) Each domestic professional corporation and each foreign professional corporation authorized to transact business in this state must annually file before March 1 with each licensing authority having jurisdiction over a professional service of a type described in its articles of incorporation a statement of qualification setting forth the names and addresses of the directors and officers of the corporation and such additional information as the licensing authority may by rule prescribe as appropriate in determining whether the corporation is complying with the provisions of this chapter and rules promulgated under this chapter. The licensing authority may charge a fee to cover the cost of filing a statement of qualification.

History: En. Sec. 23, Ch. 399, L. 1983.

35-4-210 reserved.

35-4-211 through 35-4-216. Repealed. Sec. 24, Ch. 399, L. 1983.

Compiler's Comments

Histories of Repealed Sections:

35-4-211. En. Sec. 13, Ch. 161, L. 1963; R.C.M. 1947, 15-2111; amd. Sec. 9, Ch. 202, L. 1979.

35-4-212. En. Sec. 16, Ch. 161, L. 1963; R.C.M. 1947, 15-2114(part).

35-4-213. En. Sec. 8, Ch. 161, L. 1963; R.C.M. 1947, 15-2106.

35-4-214. En. Sec. 9, Ch. 161, L. 1963; R.C.M. 1947, 15-2107.

35-4-215. En. Sec. 10, Ch. 161, L. 1963; R.C.M. 1947, 15-2108.

35-4-216. En. Sec. 12, Ch. 161, L. 1963; R.C.M. 1947, 15-2110.

Part 3

Shares and Shareholders

35-4-301. Issuance and transfer of shares. (1) A professional corporation may issue shares, fractional shares, and rights or options to purchase shares only to:

(a) natural persons authorized by law of this or any other state, a territory of the United States, or the District of Columbia to render a professional service permitted by the articles of incorporation of the corporation;

(b) general partnerships in which all the partners are authorized by law of this or any other state, a territory of the United States, or the District of Columbia to render a professional service permitted by the articles of incorporation and in which at least one partner is authorized by law in this state to render a professional service permitted by the articles of incorporation of the corporation; and

(c) professional corporations, domestic or foreign, authorized by law in this state to render a professional service permitted by the articles of incorporation of the corporation.

(2) The licensing authority may by rule further restrict or condition the issuance of shares in order to preserve ethical standards, but no rule may cause a person holding shares at the time the rule becomes effective to become a disqualified person.

(3) A shareholder of a professional corporation may transfer or pledge shares, fractional shares, and rights or options to purchase shares of the corporation only to natural persons, general partnerships, and professional corporations qualified to hold shares issued directly to them by the corporation. This subsection does not prohibit the transfer of shares of a professional corporation by operation of law or court decree.

(4) Each certificate representing shares of a professional corporation must state conspicuously upon its face that the shares are subject to restrictions on transfer imposed by this chapter and to restrictions on transfer imposed by the licensing authority pursuant to this chapter.

(5) Any issuance or transfer of shares in violation of this section or a rule promulgated under this section is void.

History: En. Sec. 14, Ch. 399, L. 1983.

Cross-References

Duties of licensing and regulatory boards, 37-1-131.

35-4-302. Corporation's right to acquire its own shares. A professional corporation may purchase its own shares from a disqualified person without regard to the availability of capital or surplus for such purchase; however, no purchase of or payment for its own shares may be made at a time when the corporation is insolvent or if purchase or payment would make it insolvent.

History: En. Sec. 15, Ch. 399, L. 1983.

35-4-303. Proxies and voting trusts. No proxy for shares of a professional corporation is valid unless given to a qualified person. A voting trust for shares of a professional corporation is invalid unless all trustees and beneficiaries are qualified persons, except that a voting trust is valid for 10 months after the death of a deceased beneficiary or for 5 months after a beneficiary has become a disqualified person.

History: En. Sec. 18, Ch. 399, L. 1983.

35-4-304 through 35-4-310 reserved.

35-4-311. Death or disqualification of a shareholder. (1) Upon the death of a shareholder of a professional corporation or if a shareholder of a professional corporation becomes a disqualified person or if shares of a professional corporation are transferred by operation of law or court decree to a disqualified person, the shares may be transferred to a qualified person and if not so transferred must be purchased or redeemed by the corporation to the extent that the corporation has funds legally available for the purchase.

(2) If the share price is not fixed by the articles of incorporation or bylaws of the corporation or by private agreement, the corporation must within 6 months after such death or 30 days after such disqualification or transfer to a disqualified person make a written offer to pay for the shares at a specified price considered by the corporation to be the fair value thereof as of the date of death, disqualification, or transfer. The offer must be given to the personal representative of the estate of a deceased shareholder or to the disqualified shareholder or transferee and must be accompanied by both a balance sheet of the corporation as of the latest available date and not more than 12 months prior to the offer and a profit and loss statement of the corporation for the 12-month period ending on the date of the balance sheet.

(3) If the fair value of the shares is agreed upon within 30 days after the date of the written offer, payment must be made within 60 days after the date of the offer or within such other period as the parties fix by agreement and upon surrender of the certificate or certificates representing such shares. Upon payment the transferor ceases to have any interest in such shares.

(4) If the fair value is not agreed upon within 30 days after the date of the written offer, the corporation must within the next 30 days file a petition in the district court of the county in this state where the registered office of the corporation is located, requesting that the fair value of such shares be found and determined. If the corporation fails or refuses to institute the proceeding, the disqualified person may do so. The disqualified person must be made a party to a proceeding brought by the corporation, and a copy of the petition must be served on the disqualified person if a resident of this state and must be served by certified mail if a nonresident. Service on nonresidents must also be made by publication as provided by law. The jurisdiction of the court is plenary and exclusive. The disqualified person is entitled to judgment against the corporation for the fair value of his shares as of the date of death, disqualification, or transfer and upon payment of the judgment must surrender to the corporation the certificates representing the shares. The court may in its discretion order that judgment be paid in installments determined by the court and may appoint one or more persons as appraisers to receive evidence and recommend a decision on the question of fair value.

(5) The judgment must include interest from the date of death, disqualification, or transfer, at a rate the court finds equitable under the circumstances.

(6) The costs and expenses of a proceeding must be determined by the court and either assessed against the corporation or assessed as the court considers equitable if the court finds that an agreed share value was not reached because the disqualified person was arbitrary or vexatious or did not act in good faith. Expenses include reasonable compensation for and expenses of the appraisers, but do not include fees and expenses of counsel for and experts

employed by any party, except that if the court determines that the fair value of shares materially exceeds the amount the corporation offered therefor or if no offer was made, the court may award to the disqualified person reasonable compensation for any expert employed by the disqualified person.

(7) If a purchase, redemption, or transfer of shares is not completed within 10 months after the death of the deceased shareholder or 5 months after the disqualification or transfer, the corporation shall cancel the shares on its books and the disqualified person has no further interest as a shareholder other than his right under this section to payment for such shares.

(8) Shares acquired by a corporation upon payment of their agreed value or payment of a judgment decreeing their fair value may be held and disposed of as in the case of other treasury shares.

(9) This section does not apply to shares of a disqualified person if the period of disqualification is less than 5 months.

(10) Any provision regarding purchase, redemption, or transfer of shares of a professional corporation contained in the articles of incorporation, the bylaws, or any private agreement is specifically enforceable in the courts of this state.

(11) This section does not prevent or relieve a professional corporation from paying pension benefits or other deferred compensation for services rendered to or on behalf of a former shareholder as otherwise permitted by law.

History: En. Sec. 16, Ch. 399, L. 1983.

35-4-312. Amendment of articles of incorporation by personal representative of sole shareholder's estate. A personal representative, guardian, conservator, or receiver of the estate of a shareholder of a professional corporation who holds all of the outstanding shares of the corporation may amend the articles of incorporation by signing a written consent to amendment. The articles of amendment must be executed in duplicate by the personal representative, guardian, conservator, or receiver and by the secretary or assistant secretary of the corporation, verified by one of the persons signing the articles, and must set forth:

(1) the name of the corporation;
(2) the amendments adopted;
(3) the date of adoption of the amendments; and
(4) the number of shares outstanding.

History: En. Sec. 17, Ch. 399, L. 1983.

Part 4
Operation

35-4-401. General powers. (1) A professional corporation has the powers enumerated in the Montana Business Corporation Act, except that it may be a promoter, general partner, member, associate, or manager only of a partnership, joint venture, trust, or other enterprise engaged only in rendering professional services or carrying on business permitted by the articles of incorporation of the professional corporation.

(2) A professional corporation may invest its funds in real estate, mortgages, stocks, bonds, or any other type of investment.

History: En. Sec. 8, Ch. 399, L. 1983.

35-4-402. Prohibited activities. A professional corporation may not engage in any profession or business other than the profession or professions and business permitted by its articles of incorporation.

History: En. Sec. 7, Ch. 399, L. 1983.

35-4-403. Rendering services. A professional corporation, domestic or foreign, may render professional services in this state only through natural persons permitted to render such services in this state; however, nothing in this chapter requires any person employed by a professional corporation to be licensed to perform services for which no license is otherwise required or prohibits the rendering of professional services by a licensed natural person acting in his individual capacity, even if such person is a shareholder, director, officer, employee, or agent of a professional corporation, domestic or foreign.

History: En. Sec. 9, Ch. 399, L. 1983.

35-4-404. Responsibility for services. (1) An individual who renders professional services as an employee of a domestic or foreign professional corporation is liable for any negligent or wrongful act or omission in which he personally participates to the same extent as if he had rendered such services as a sole practitioner. An employee of a professional corporation is not liable for the conduct of other employees unless he is at fault in appointing, supervising, or cooperating with them.

(2) A domestic or foreign professional corporation whose employee performs professional services within the scope of his employment or apparent authority to act for the corporation is liable to the same extent as that employee.

(3) Except as otherwise provided by statute, the personal liability of a shareholder of a domestic or foreign professional corporation is no greater in any respect than that of a shareholder of a corporation organized under the Montana Business Corporation Act.

History: En. Sec. 10, Ch. 399, L. 1983.

Cross-References

Montana Medical Legal Panel Act, Title 27, ch. 6.

Disciplinary authority of licensing and regulatory boards — injunctions, 37-1-136.

35-4-405. Relationship to clients or patients — privileged communications. (1) The relationship between an individual performing professional services as an employee of a professional corporation, domestic or foreign, and a client or patient is the same as if the individual performed such services as a sole practitioner.

(2) The relationship between a professional corporation, domestic or foreign, performing professional services and the client or patient is the same as between the client or patient and the individual performing the services.

(3) Any privilege applicable to communications between a person rendering professional services and the person receiving the services recognized under the statutory or common law of this state extends to a professional corporation, domestic or foreign, and its employees.

History: En. Sec. 11, Ch. 399, L. 1983.

Cross-References

Privileges, Title 26, ch. 1, part 8.

35-4-406 through 35-4-410 reserved.

35-4-411. Admission of foreign professional corporations — application — revocation. (1) A foreign professional corporation is entitled to a certificate of authority to transact business in this state only if:

(a) the name of the corporation meets the requirements of 35-4-206;

(b) the corporation is organized only for purposes for which a professional corporation may be organized under this chapter; and

(c) all the shareholders, not less than one-half the directors, and all the officers other than the secretary and treasurer of the corporation are qualified persons with respect to the corporation.

(2) No foreign professional corporation is required to obtain a certificate of authority to transact business in this state unless it maintains an office in this state for the conduct of business or professional practice.

(3) The application for a certificate of authority must include a statement that all the shareholders, not less than one-half the directors, and all the officers other than the secretary and treasurer are licensed in at least one state or territory or the District of Columbia to render a professional service described in the statement of purposes of the corporation.

(4) The certificate of authority may be revoked by the secretary of state if the corporation fails to comply with any provision of this chapter. The licensing authority shall certify to the secretary of state, from time to time, the names of all foreign professional corporations that have given cause for revocation, together with the facts pertinent thereto, and shall concurrently mail to each corporation at its registered office in this state a notice that such certification has been made. No certificate of authority of a foreign professional corporation may be revoked unless there has been both 60 days' notice of intent to revoke and a failure to correct the noncompliance during such 60 days.

History: En. Sec. 22, Ch. 399, L. 1983.

Part 5

Reorganization and Dissolution

35-4-501. Merger and consolidation. A professional corporation may merge or consolidate with another corporation, domestic or foreign, only if every shareholder of each corporation is qualified to be a shareholder of the surviving or new corporation. If the surviving or new corporation will render professional services in this state, it shall comply with this chapter.

History: En. Sec. 19, Ch. 399, L. 1983.

35-4-502. Termination of all professional services. If a professional corporation ceases to render professional services, it shall amend its articles of incorporation to delete from its stated purposes the rendering of professional services and to conform its corporate name to the requirements of the Montana Business Corporation Act. The corporation may then continue in existence as a corporation under the Montana Business Corporation Act and is no longer subject to this chapter.

History: En. Sec. 20, Ch. 399, L. 1983.

35-4-503. Involuntary dissolution. A professional corporation may be dissolved involuntarily as provided in Title 35, chapter 6.

History: En. Sec. 21, Ch. 399, L. 1983.

CHAPTER 5

BUSINESS TRUSTS

Part 1 — General

35-5-101. Definition of business trust.
35-5-102. Classification of business trusts.
35-5-103. Applicability of general corporate law.
35-5-104. Business trust authorized as form of association.

Part 2 — Formation and Operation

35-5-201. Creating instrument — filing — consent of foreign business trust to laws and service of process.
35-5-202. Issuance of certificate or license — effect.
35-5-203. Amendment to creating instrument — filing.
35-5-204. Powers of business trust to be specified in instrument — binding effect of instrument.
35-5-205. Taxes and fees.

Chapter Cross-References

Agency, Title 28, ch. 10.

Trust Code, Title 72, ch. 33 through 36.

Part 1

General

35-5-101. Definition of business trust. In this chapter, unless the context otherwise requires, "business trust" means an unincorporated association or trust of the type which at common law was known as a "business trust" or "Massachusetts trust", created by an instrument under which property is held and managed by trustees for the benefit and profit of such persons as are or may become the holders of transferable certificates evidencing beneficial interests in the trust estate.

History: En. Sec. 1, Ch. 277, L. 1967; R.C.M. 1947, 15-2501.

35-5-102. Classification of business trusts. Business trusts shall be either domestic or foreign. A domestic business trust is a business trust organized under the laws of this state. A foreign business trust includes every other business trust.

History: En. Sec. 2, Ch. 277, L. 1967; R.C.M. 1947, 15-2502.

35-5-103. Applicability of general corporate law. Any business trust shall be subject to such applicable provisions of law from time to time in effect with respect to domestic and foreign corporations, respectively. These shall include without limitation such applicable provisions of law as relate to the issuance of securities, filing of required statements and reports, service of process, general grants of power to act, withdrawal, right to sue and be sued, limitation of individual liability of shareholders, and rights to acquire, mortgage, sell, lease, operate, and otherwise deal in or with real property.

History: En. Sec. 8, Ch. 277, L. 1967; R.C.M. 1947, 15-2508.

Cross-References

General corporate law, Title 35, ch. 1.

35-5-104. Business trust authorized as form of association. A business trust is permitted as a recognized form of association for the conduct of business within this state.

History: En. Sec. 3, Ch. 277, L. 1967; R.C.M. 1947, 15-2503.

Part 2

Formation and Operation

Part Cross-References

Formation, articles of incorporation, and bylaws of business corporations, Title 35, ch. 1, part 2.

Formation, articles of incorporation, and bylaws of nonprofit corporations, Title 35, ch. 2, part 2.

Formation of religious corporations sole, Title 35, ch. 3, part 2.

Organization of professional service corporations, Title 35, ch. 4, part 2.

Formation of limited partnerships, Title 35, ch. 12, part 6.

Formation of mining partnerships, Title 35, ch. 13, part 1.

Formation, articles of incorporation, and bylaws of cooperative associations, Title 35, ch. 15, part 2.

Formation of agricultural associations, Title 35, ch. 16, part 2.

Formation of cooperative agricultural marketing associations, Title 35, ch. 17, part 2.

Formation, articles, and bylaws of rural cooperative utilities, Title 35, ch. 18, part 2.

Formation of cemetery associations, Title 35, ch. 20, part 1.

35-5-201. Creating instrument — filing — consent of foreign business trust to laws and service of process. (1) Any business trust desiring to transact business in this state shall file with the secretary of state:

(a) an executed copy of its articles, declarations of trust, or trust agreement by which the trust was created and all amendments thereto or a true copy thereof certified to be such by a trustee of the trust before an official authorized to administer oaths or by a public official of another state, territory, or country in whose office an executed copy thereof is on file. The true copy shall be verified within 60 days before it is filed with the secretary of state.

(b) a verified list of the names, residences, and post-office addresses of its trustees;

(c) an affidavit setting forth its assumed business name, if any.

(2) A foreign business trust shall file a verified application in the office of the secretary of state as provided in the case of foreign corporations under 35-1-1028 and shall file a copy of its articles, declaration of trust, or trust agreement by which it was created, certified by the secretary of state, in the office of the county clerk of the county where its principal office or place of business in this state will be located. The foreign business trust shall also file, at the same time and in the same office, a certificate certifying that it has consented to all the license laws and other laws of the state of Montana relative to foreign corporations and has consented to be sued in the courts of this state, upon all causes of action arising against it in this state and that service of process may be made upon some person, a citizen of this state whose principal place of business is designated in such certificate. Service of process, when made upon such agent, is valid service on the business trust.

History: En. Sec. 4, Ch. 277, L. 1967; amd. Sec. 13, Ch. 62, L. 1977; R.C.M. 1947, 15-2504(1), (2); amd. Sec. 194, Ch. 368, L. 1991.

Cross-References

Assumed business names, Title 30, ch. 13, part 2.

Service of process on foreign corporation, 35-1-1034.

35-5-202. Issuance of certificate or license — effect. Whenever a business trust has complied with the filing requirements as provided in 35-5-201, the secretary of state shall issue to a domestic business trust a certificate of organization or to a foreign business trust a license to do business in this state, and the business trust may thereupon commence business.

History: En. Sec. 4, Ch. 277, L. 1967; amd. Sec. 13, Ch. 62, L. 1977; R.C.M. 1947, 15-2504(3).

35-5-203. Amendment to creating instrument — filing. The articles, declaration of trust, or trust agreement by which any business trust was created may be amended in the manner specified therein or in such manner as is valid under the law applicable to such business trust, provided that no such amendment shall be legally effective in this state until a copy thereof, certified as provided in 35-5-201(1)(a), has been filed with the secretary of state of Montana and a copy thereof, certified by the secretary of state, has been filed in the office of the county clerk and recorder in the county where the principal place of business of the trust is located.

History: En. Sec. 5, Ch. 277, L. 1967; R.C.M. 1947, 15-2505.

35-5-204. Powers of business trust to be specified in instrument — binding effect of instrument. (1) Subject to the provisions of 35-5-205, the powers and authority of any business trust authorized under this chapter to transact business in this state shall be as specified in the instrument by which it was created, as amended, which instrument shall be construed and interpreted in accordance with the law applicable to such business trust, provided that no business trust shall engage in any activity in this state which would violate the public policy of this state or engage in any business in this state which private corporations for profit organized under the laws of this state may not legally transact.

(2) Subject to the limitations on power and authority as provided in subsection (1) of this section, any person dealing with a business trust authorized under this chapter to transact business in this state shall be bound by the terms and conditions of the instrument by which the business trust was created and by any amendments thereto which have been filed and recorded in compliance with 35-5-203.

History: En. Sec. 6, Ch. 277, L. 1967; R.C.M. 1947, 15-2506.

35-5-205. Taxes and fees. Any business trust created under this chapter or entering this state pursuant to this chapter shall pay such taxes and fees as are imposed by the laws, ordinances, and regulations of this state and any counties and municipalities thereof on domestic and foreign corporations, respectively, on an identical basis therewith.

History: En. Sec. 7, Ch. 277, L. 1967; R.C.M. 1947, 15-2507.

Cross-References

Corporate license tax, Title 15, ch. 31, part 1.

Corporate income tax — generally, Title 15, ch. 31, part 4.

CHAPTER 6

INVOLUNTARY CORPORATE DISSOLUTION

Part 1 — Dissolution by Secretary of State

35-6-101. Applicability to corporations presently in default.
35-6-102. Involuntary dissolution — grounds.
35-6-103. Defaulting corporations — penalties and forfeitures.
35-6-104. Involuntary dissolution — procedure.

Part 2 — Reinstatement

35-6-201. Reinstatement of dissolved corporation.
35-6-202. Relation back of corporate rights restored.
35-6-203. Acquisition of new name by corporation upon reinstatement.

Part 1

Dissolution by Secretary of State

Part Cross-References

Dissolution and liquidation of business corporations, Title 35, ch. 1, part 9.

Dissolution and liquidation of nonprofit corporations, Title 35, ch. 2, part 7.

Dissolution and winding up of partnerships in general, Title 35, ch. 10, part 6.

Dissolution of limited partnerships, Title 35, ch. 12, part 12.

Sale or disposition of assets of cooperative associations, 35-15-506.

Sale or disposition of assets of cooperative agricultural marketing associations, 35-17-506.

Dissolution of rural cooperative utilities, 35-18-404, 35-18-405.

35-6-101. Applicability to corporations presently in default. The secretary of state may initiate procedures consistent with this chapter to dissolve corporations that have been in default prior to July 1, 1977.

History: En. 15-2706 by Sec. 6, Ch. 455, L. 1977; R.C.M. 1947, 15-2706.

35-6-102. Involuntary dissolution — grounds. (1) Any domestic corporation, whether for profit or not for profit, may be dissolved involuntarily by order of the secretary of state when:

(a) the corporation has failed to file its annual report within the time required by law or failed to remit any fees required by law;

(b) the corporation procured its certificate of incorporation through fraud;

(c) the corporation has exceeded or abused the authority conferred upon it by law and such excesses or abuses have continued after a written notice specifying the manner in which the corporation has exceeded or abused such authority has been received by the registered agent of the corporation from the secretary of state;

(d) the corporation has failed for 60 days to appoint and maintain a registered agent in this state; or

(e) the corporation has failed for 60 days after change of its registered office or registered agent to file in the office of the secretary of state a statement of such change.

(2) If dissolution is sought under subsection (1)(b) or (1)(c) of this section, the secretary of state may so dissolve only when such fact is established by an order of the district court. In addition to other persons so authorized by law,

the secretary of state or the attorney general may maintain an action in the district court to implement the provisions of this section.

History: En. Sec. 87, Ch. 300, L. 1967; Sec. 15-2287, R.C.M. 1947; amd. and redes. 15-2701 by Sec. 1, Ch. 455, L. 1977; R.C.M. 1947, 15-2701.

35-6-103. Defaulting corporations — penalties and forfeitures. A corporation which is guilty of any of the actions or omissions described in 35-6-102(1) is in default. The defaulting corporation may, by reason of such default, be dissolved involuntarily by an order of the secretary of state in accordance with the provisions of this chapter and thereby forfeit its right to transact any business within the state.

History: En. 15-2702 by Sec. 2, Ch. 455, L. 1977; R.C.M. 1947, 15-2702.

35-6-104. Involuntary dissolution — procedure. (1) On or before September 1 of each year, the secretary of state shall compile a list of defaulting corporations, together with the amount of any filing fee, penalty, or costs remaining unpaid.

(2) The secretary of state shall give notice to the defaulting corporations by:

(a) mailing a letter addressed to the corporation in care of its registered agent or any director or officer; or

(b) publication of a general notice to all Montana corporations once a month for 3 consecutive months in a newspaper of general circulation in Lewis and Clark County.

(3) The notice referred to in subsection (2) shall specify the fact of the proposed dissolution and state that unless the grounds for dissolution described in 35-6-102 have been rectified within 90 days following the mailing or publication of notice:

(a) the secretary of state will dissolve defaulting corporations;

(b) defaulting corporations will forfeit the amount of any tax, penalty, or costs to the state of Montana; and

(c) defaulting corporations will forfeit their rights to carry on business within the state.

(4) After 90 days following mailing or publication of each notice, the secretary of state may, by order, dissolve all corporations which have not satisfied the requirements of applicable law and compile a full and complete list containing the names of all corporations that have been so dissolved. The secretary of state shall immediately give notice to the dissolved corporation as specified in subsection (2).

(5) In the case of involuntary dissolution, all the property and assets of the dissolved corporation must be held in trust by the directors of the corporation and 35-1-938 through 35-1-943 or 35-2-729, whichever is appropriate, is applicable to liquidate the property and assets if necessary.

History: En. 15-2703 by Sec. 3, Ch. 455, L. 1977; R.C.M. 1947, 15-2703; amd. Sec. 4, Ch. 78, L. 1979; amd. Secs. 183, 195, Ch. 368, L. 1991; amd. Sec. 171, Ch. 411, L. 1991.

Part 2

Reinstatement

35-6-201. Reinstatement of dissolved corporation. (1) The secretary of state may:

(a) reinstate any corporation which has been dissolved under the provisions of this chapter; and

(b) restore to such corporation its right to carry on business in this state and to exercise all its corporate privileges and immunities.

(2) A corporation applying for reinstatement shall submit to the secretary of state one original and one copy of the application, executed by a person who was an officer or director at the time of dissolution, setting forth:

(a) the name of the corporation;

(b) a statement that the assets of the corporation have not been liquidated pursuant to 35-1-938 through 35-1-943 or 35-2-726 and 35-2-727;

(c) a statement that not less than a majority of its directors have authorized the application for reinstatement; and

(d) if its corporate name has been legally acquired by another corporation prior to its application for reinstatement, the corporate name under which the corporation desires to be reinstated.

(3) The corporation shall submit with its application for reinstatement:

(a) a certificate from the department of revenue stating that all taxes imposed pursuant to Title 15 have been paid; and

(b) a filing fee in an amount equal to one-half of the filing and license fees which the corporation would be required to pay if the corporation were filing its articles of incorporation.

(4) When all requirements are met and the secretary of state reinstates the corporation to its former rights, he shall:

(a) conform and file in his office reports, statements, and other instruments submitted for reinstatement;

(b) immediately issue and deliver to the corporation so reinstated a certificate of reinstatement authorizing it to transact business; and

(c) upon demand, issue to the corporation one or more certified copies of such certificate of reinstatement.

(5) The secretary of state may not order a reinstatement if 5 years have elapsed since the dissolution.

History: En. 15-2704 by Sec. 4, Ch. 455, L. 1977; R.C.M. 1947, 15-2704(1) thru (4), (6); amd. Sec. 5, Ch. 78, L. 1979; amd. Sec. 51, Ch. 131, L. 1983; amd. Sec. 30, Ch. 174, L. 1983; amd. Sec. 196, Ch. 368, L. 1991; amd. Sec. 172, Ch. 411, L. 1991.

Cross-References

State tax clearance certificate, 35-1-944.

35-6-202. Relation back of corporate rights restored. Any restoration of corporate rights pursuant to this chapter relates back to the date the corporation was involuntarily dissolved, and the corporation shall be considered to have been an existing legal entity from the date of its original incorporation.

History: En. 15-2704 by Sec. 4, Ch. 455, L. 1977; R.C.M. 1947, 15-2704(5).

35-6-203. Acquisition of new name by corporation upon reinstatement. In all cases where a corporation is dissolved under the provisions of this chapter or has, prior to July 1, 1977, been dissolved under other law and the corporate name of that corporation has been legally acquired by another corporation prior to the application for reinstatement of such dissolved corporation, such dissolved corporation shall in its application for reinstatement submit to the secretary of state some other name under which it desires its corporate existence to be reinstated. If that name is sufficiently distinctive and different from all existing corporations, the secretary of state shall issue to such reinstated corporation a certificate of reinstatement under the new name.

History: En. 15-2705 by Sec. 5, Ch. 455, L. 1977; R.C.M. 1947, 15-2705.

Cross-References

Assumed business names, Title 30, ch. 13, part 2.

Exclusivity of corporate name, 30-13-202.

Business corporation — corporate name, Title 35, ch. 1, part 3.

Business trust name, 35-5-201.

CHAPTER 7

RESERVED

CHAPTER 8

MONTANA LIMITED LIABILITY COMPANY ACT

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General Provisions

Part Cross-References

Close corporations — general provisions, Title 35, ch. 9, part 1.

Partnerships — general provisions, Title 35, ch. 10, part 1.

Limited partnerships — general provisions, Title 35, ch. 12, part 5.

35-8-101. Short title. This chapter may be cited as the "Montana Limited Liability Company Act".

History: En. Sec. 1, Ch. 120, L. 1993.

35-8-102. Definitions. As used in this chapter, unless the context requires otherwise, the following definitions apply:

(1) "Articles of organization" means articles filed pursuant to 35-8-201 and those articles as amended or restated. In the case of a foreign limited liability company, the term includes all records serving a similar function required to be filed under the laws of the state or country where it is organized.

(2) "At-will company" means a limited liability company other than a term company.

(3) "Business" includes every trade, occupation, profession, or other lawful purpose, whether or not carried on for profit.

(4) "Corporation" means a corporation formed under the laws of this state or a foreign corporation.

(5) "Court" includes every court having jurisdiction in the case.

(6) "Debtor in bankruptcy" means a person who is the subject of an order for relief under Title 11 of the United States Code or a comparable order under federal, state, or foreign law governing insolvency.

(7) "Disqualified person" means any person or entity that for any reason is or becomes ineligible under this chapter to become a member in a professional limited liability company.

(8) "Distribution" means a transfer of money, property, or other benefit to a member in that member's capacity as a member of a limited liability company or to a transferee of a member's distributional interest.

(9) "Distributional interest" means all of a member's interest in the distributions of a limited liability company.

(10) "Event of dissociation" means an event that causes a person to cease to be a member.

(11) "Foreign corporation" means a corporation that is organized under the laws of a state other than Montana or under the laws of any foreign country.

(12) "Foreign limited liability company" means an entity that is:

(a) an unincorporated entity;

(b) organized under laws of a state other than Montana or under the laws of any foreign country;

(c) organized under a statute pursuant to which an entity may be formed that affords to each of its members limited liability with respect to the liabilities of the entity; and

(d) not required to be registered or organized under any statute of this state other than this chapter.

(13) "Foreign limited partnership" means a limited partnership formed under the laws of any state other than Montana or under the laws of any foreign country.

(14) "Foreign professional limited liability company" means a limited liability company organized for the purpose of rendering professional services under the laws of any state other than Montana.

(15) "Licensing authority" means an officer, board, agency, court, or other authority in this state that has the power to issue a license or other legal authorization to render a professional service.

(16) "Limited liability company" or "domestic limited liability company" means an organization that is formed under this chapter.

(17) "Limited partnership" means a limited partnership formed under the laws of this state or a foreign limited partnership.

(18) "Manager" means a person who, whether or not a member of a manager-managed company, is vested with authority under 35-8-301.

(19) "Manager-managed company" means a limited liability company that is so designated in its articles of organization.

(20) "Member" means a person who has been admitted to membership in a limited liability company, as provided in 35-8-703, and who has not dissociated from the limited liability company.

(21) "Member-managed company" means a limited liability company other than a manager-managed company.

(22) "Operating agreement" means an agreement, including amendments, as to the conduct of the business and affairs of a limited liability company and the relations among the members, managers, and the company that is binding upon all of the members.

(23) "Person" means an individual, a general partnership, a limited partnership, a domestic or foreign limited liability company, a trust, an estate, an association, a corporation, or any other legal or commercial entity.

(24) "Professional limited liability company" means a limited liability company designating itself as a professional limited liability company in its articles of organization.

(25) "Professional service" means a service that may lawfully be rendered only by persons licensed under a licensing law of this state and that may not be lawfully rendered by a limited liability company that is not a professional limited liability company.

(26) "Qualified person" means a natural person, limited liability company, general partnership, or professional corporation eligible under this chapter to own shares issued by a professional limited liability company.

(27) "Record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is recoverable in a perceivable form.

(28) "Sign" means to identify a record by means of a signature, mark, or other symbol with the intent to authenticate it.

(29) "State" means a state, territory, or possession of the United States, the District of Columbia, or the Commonwealth of Puerto Rico.

(30) "Surviving limited liability company" means the constituent entity surviving the merger, as identified in the articles of merger provided for in 35-8-1201.

(31) "Term company" means a limited liability company designated as a term company in its articles of organization.

History: En. Sec. 2, Ch. 120, L. 1993; amd. Sec. 1, Ch. 302, L. 1999.

Compiler's Comments

1999 Amendment: Chapter 302 in definition of articles of organization inserted second sentence concerning foreign limited liability company; inserted definitions of at-will company, business, debtor in bankruptcy, distribution, distributional interest, manager-managed company, member-managed company, record, sign, and term company; in definition of event of dissociation at end deleted "as provided in 35-8-802"; in definition of foreign limited liability company in (a) and (c) substituted "entity" for "association"; deleted definition of limited liability company interest that read: ""Limited liability company interest" or "interest in the limited liability company" means the interest that can be assigned under 35-8-704 and that is available to creditors under 35-8-705"; in definition of manager substituted "a person who, whether or not a member of a manager-managed company, is vested with authority under 35-8-301" for "with respect to a limited liability company that has set forth in its articles of organization that it is to be managed by managers, the person designated in accordance with 35-8-302"; in definition of operating agreement near beginning substituted "including amendments" for "written or oral" and after "company" inserted "and the relations among the members, managers, and the company"; and made minor changes in style. Amendment effective April 12, 1999.

35-8-103. Name. (1) The name of each limited liability company as set forth in its articles of organization must contain the words "limited liability company" or "limited company" or the abbreviations "l.l.c.", "l.c.", "llc", or "lc". The word "limited" may be abbreviated as "ltd.", and the word "company" may be abbreviated as "co.".

(2) A limited liability company name must be distinguishable on the records of the secretary of state from:

(a) the name of any business corporation, nonprofit corporation, limited partnership, or limited liability company organized or reserved under the laws of this state;

(b) the name of any foreign business corporation, foreign nonprofit corporation, foreign limited partnership, or foreign limited liability company registered or qualified to do business in this state;

(c) any assumed business name, limited partnership name, trademark, service mark, or other name registered or reserved with the secretary of state; and

(d) the corporate name of a domestic corporation that has dissolved but only for a period of 120 days after the effective date of its dissolution.

(3) The use of the name of a limited liability company by another limited liability company or limited partnership is governed by 35-1-308.

(4) Contests over names registered under this section are governed by 35-1-310.

History: En. Sec. 3, Ch. 120, L. 1993; amd. Sec. 17, Ch. 229, L. 1999.

Compiler's Comments

1999 Amendment: Chapter 229 inserted (3) providing that use of name of limited liability company or partnership is governed by 35-1-308; and made minor changes in style. Amendment effective April 2, 1999.

Cross-References

Registration of assumed business name — when prohibited, 30-13-202.

Trademarks, Title 30, ch. 13, part 3.

Corporate name, 35-1-308.

Names of foreign corporations, 35-1-1031.

Professional service corporation names, 35-4-206.

Limited partnership names, 35-12-505.

35-8-104. Reservation of name. (1) The exclusive right to use a name may be reserved by:

(a) a person intending to organize a limited liability company and to adopt that name;

(b) a limited liability company or foreign limited liability company registered in this state that intends to adopt that name;

(c) a foreign limited liability company intending to register in this state and to adopt that name; or

(d) a person intending to organize a foreign limited liability company and to have it registered in this state and to adopt that name.

(2) The reservation must be made by filing with the secretary of state an application, executed by the applicant, to reserve a specified name. If the secretary of state finds that the name is available for use by a domestic or foreign limited liability company, the secretary of state shall reserve the name for the exclusive use of the applicant for a nonrenewable period of 120 days from the date the application is filed.

(3) The right to the exclusive use of a reserved name may be transferred to another person by filing with the secretary of state a notice of the transfer, executed by the applicant for whom the name was reserved, and by specifying the name to be transferred and the name and address of the transferee. The transfer may not extend the term during which the name is reserved.

History: En. Sec. 4, Ch. 120, L. 1993; amd. Sec. 18, Ch. 229, L. 1999.

Compiler's Comments

1999 Amendment: Chapter 229 deleted former (3) that read: "(3) The holder of a reserved limited liability company name may renew the reservation for successive periods of 120 days each from the date of renewal"; and made minor changes in style. Amendment effective April 2, 1999.

35-8-105. Registered office and registered agent. (1) A limited liability company shall continuously maintain in this state:

(a) a registered office that may but need not be the same as its place of business; and

(b) a registered agent for service of process (at the registered office) on the limited liability company that is either an individual resident of this state, a domestic corporation, a limited liability company, or a foreign corporation or foreign limited liability company authorized to transact business in this state.

(2) Unless the registered agent signed the document making the appointment, the appointment of a registered agent or a successor registered agent on whom process may be served is not effective until the agent delivers a statement in writing to the secretary of state accepting the appointment.

(3) A limited liability company may change its registered office or registered agent, or both, by delivering to the secretary of state a statement setting forth:

(a) the name of the limited liability company;

(b) the address of its current registered office;

(c) if the address of its registered office is to be changed, the new address of the registered office;

(d) the name and address of its current registered agent; and

(e) if its registered agent or the agent's address is to be changed, the name and address of the successor registered agent or the current registered agent's new address.

(4) The change of address of the registered office or registered agent is effective on delivery of the statement to the secretary of state. The appointment of a new registered agent is effective on delivery of the statement to the secretary of state and on receipt by the secretary of state of evidence that the new registered agent has accepted appointment pursuant to subsection (2).

(5) A registered agent of a limited liability company may resign as registered agent by delivering a written notice and 2 copies to the secretary of state. The secretary of state shall mail a copy of the notice to the limited liability company at its registered office and its principal place of business. The appointment of the registered agent terminates 30 days after receipt of the notice by the secretary of state or on the appointment of a new registered agent, whichever occurs first.

(6) If a registered agent changes its address to another place in this state, it may change the address by delivering a statement to the secretary of state as required by subsection (3), except that it need be signed only by the registered agent. The statement must recite that a copy of the statement has been mailed to the limited liability company.

History: En. Sec. 5, Ch. 120, L. 1993.

Cross-References

Agency, Title 28, ch. 10.

35-8-106. Purpose. (1) A limited liability company organized under 35-8-201 through 35-8-211 has the purpose of engaging in any lawful business unless a more limited purpose is set forth in the articles of organization.

(2) Limited liability companies may be organized under 35-8-201 through 35-8-211 for any lawful purpose except for the purpose of banking or insurance.

History: En. Sec. 6, Ch. 120, L. 1993.

35-8-107. Powers. A limited liability company may:

(1) sue, be sued, complain, and defend in all courts;

(2) transact its business, carry on its operations, and have and exercise the powers granted by this section in any state; in any territory, district, or possession of the United States; and in any foreign country;

(3) make contracts and guarantees, incur liabilities, and borrow money;

(4) sell, lease, exchange, transfer, convey, mortgage, pledge, and otherwise dispose of any of its assets;

(5) acquire by purchase or in any other manner, take, receive, own, hold, improve, and otherwise deal with any interest in real or personal property, wherever located;

(6) issue notes, bonds, and other obligations and secure any of them by mortgage, deed of trust, or security interest of any of its assets;

(7) purchase, take, receive, subscribe for, or otherwise acquire, own, hold, vote, use, employ, sell, mortgage, loan, pledge, or otherwise dispose of and otherwise use and deal in and with stock or other interests in and obligations of domestic and foreign corporations, associations, general or limited partnerships, limited liability companies, business trusts, and individuals;

(8) invest its surplus funds, lend money from time to time in any manner that may be appropriate to enable it to carry on the operations or fulfill the purposes set forth in its articles of organization, and take and hold real property and personal property as security for the payment of funds loaned or invested;

(9) elect or appoint agents and define their duties and fix their compensation;

(10) sell, convey, mortgage, pledge, lease, exchange, transfer, and otherwise dispose of all or any part of its property and assets;

(11) be a promoter, stockholder, partner, member, associate, or agent of any corporation, partnership, domestic or foreign limited liability company, joint venture, trust, or other enterprise;

(12) indemnify and hold harmless any member, agent, or employee from and against any claims and demands whatsoever, except in the case of action or failure to act by the member, agent, or employee that constitutes willful misconduct or recklessness, and subject to the standards and restrictions, if any, set forth in the articles of organization or operating agreement;

(13) cease its activities and dissolve;

(14) pay pensions and establish pension plans, pension trusts, profit-sharing plans, share bonus plans, share option plans, and benefit or incentive plans for any of its current or former directors, officers, employees, and agents;

(15) make donations for the public welfare or for charitable, religious, scientific, or educational purposes and, in time of war, make donations in aid of war activities; and

(16) do every other act not inconsistent with law that is appropriate to promote and further the business and affairs of the limited liability company.

History: En. Sec. 7, Ch. 120, L. 1993.

35-8-108. Registered name of foreign limited liability company — registration renewal. (1) A foreign limited liability company may register its name or its name with any addition required by 35-8-103 if the name is distinguishable from names that are not available under 35-8-103(2).

(2) A foreign limited liability company shall register its name or its name with any addition required by 35-8-103 by delivering to the secretary of state for filing an application:

(a) setting forth:

(i) its name or its name with any addition required by 35-8-103;

(ii) the state or country where it was organized;

(iii) the date of its organization; and

(iv) a brief description of the nature of its business;

(b) accompanied by a certificate of existence or a similar document from the state or country where it was organized.

(3) The name, if accepted by the secretary of state, is registered for the applicant's exclusive use as of the date the application is filed with the secretary of state.

(4) A foreign limited liability company may annually renew its registration for successive years by delivering to the secretary of state a renewal application that complies with the requirements of subsection (2). The renewal application must be received by the secretary of state for filing between October 1 and

December 31 of the year preceding the year for which a renewal is sought. The renewal is effective until December 31 of the following year.

(5) A foreign limited liability company has the right to use its registered name until the registration of the name is canceled as a result of it consenting to the use of the registered name by another business entity authorized to do business in this state or until the foreign limited liability company applies for and receives a certificate of authority to transact business in this state or it organizes as a domestic limited liability company in this state. A foreign limited liability company receiving a certificate of authority to transact business in this state or that organizes as a domestic limited liability company may use the canceled registered name as its business name.

History: En. Sec. 19, Ch. 229, L. 1999.

Compiler's Comments

Effective Date: Section 25, Ch. 229, L. 1999, provided that this section is effective on passage and approval. Approved April 2, 1999.

35-8-109. Effect of operating agreement — nonwaivable provisions. (1) Except as provided in subsection (2), all members of a limited liability company may enter into an operating agreement, which need not be in writing, to regulate the affairs of the company and the conduct of its business and to govern relations among the members, managers, and company. To the extent that the operating agreement does not otherwise provide, this chapter governs relations among the members, managers, and company.

(2) An operating agreement need not be in writing except as otherwise provided in this chapter to:

(a) vary the recordkeeping requirements under 35-8-405;

(b) vary the rights of members to share in distributions under 35-8-601 or 35-8-903; or

(c) vary the process for admission of members under 35-8-707.

(3) The operating agreement may not:

(a) unreasonably restrict a right to information or access to records under 35-8-405;

(b) eliminate the duty of loyalty under 35-8-310, but the agreement may:

(i) identify specific types or categories of activities that do not violate the duty of loyalty, if not manifestly unreasonable; and

(ii) specify the number or percentage of members or disinterested managers that may authorize or ratify, after full disclosure of all material facts, a specific act or transaction that otherwise would violate the duty of loyalty;

(c) unreasonably reduce the duty of care under 35-8-310;

(d) eliminate the obligation of good faith and fair dealing under 35-8-310, but the operating agreement may determine the standards by which the performance of the obligation is to be measured, if the standards are not manifestly unreasonable;

(e) vary the right to expel a member upon the occurrence of an event specified in 35-8-803;

(f) vary the requirement to wind up the limited liability company's business in a case specified in 35-8-901(1)(c) or 35-8-902; or

(g) restrict the rights of a person under this chapter, other than a manager, member, or transferee of a member's distributional interest.

History: En. Sec. 2, Ch. 302, L. 1999.

Compiler's Comments

Effective Date: Section 60, Ch. 302, L. 1999, provided: "[This act] is effective on passage and approval." Approved April 12, 1999.

35-8-110. Purpose — supplemental principles of law — interest rate. (1) Unless displaced by particular provisions of this chapter, the principles of law and equity supplement this chapter.

(2) If an obligation to pay interest arises under the provisions of this chapter and the rate of interest is not specified, then the rate is the rate of interest specified in 31-1-106.

History: En. Sec. 3, Ch. 302, L. 1999.

Compiler's Comments

Effective Date: Section 60, Ch. 302, L. 1999, provided: "[This act] is effective on passage and approval." Approved April 12, 1999.

35-8-111. Uniformity of application and construction. Unless otherwise provided in this chapter, this chapter must be applied and construed to effectuate its general purpose to make the law with respect to the subject of this chapter among states enacting the Uniform Limited Liability Company Act.

History: En. Sec. 4, Ch. 302, L. 1999.

Compiler's Comments

Effective Date: Section 60, Ch. 302, L. 1999, provided: "[This act] is effective on passage and approval." Approved April 12, 1999.

Part 2
Formation

Part Cross-References

Formation, articles of incorporation, bylaws, and amendments of nonprofit corporations, Title 35, ch. 2, part 2.

Formation and operation of religious corporations sole, Title 35, ch. 3, part 2.

Organization and regulation of professional service corporations, Title 35, ch. 4, part 2.

Formation and operation of business trusts, Title 35, ch. 5, part 2.

Registration of limited liability partnership, Title 35, ch. 10, part 7.

Formation of limited partnerships, Title 35, ch. 12, part 6.

Formation of mining partnerships, Title 35, ch. 13, part 1.

Formation, articles of incorporation, and bylaws of cooperative associations, Title 35, ch. 15, part 2.

Formation of agricultural associations, Title 35, ch. 16, part 2.

Formation of cooperative agricultural marketing associations, Title 35, ch. 17, part 2.

Formation, articles of incorporation, and bylaws of rural cooperative utilities, Title 35, ch. 18, part 2.

Formation of cemetery associations, Title 35, ch. 20, part 1.

35-8-201. Formation. (1) One or more persons may form a limited liability company consisting of one or more members by signing and filing articles of organization with the secretary of state. The person or persons need not be members of the limited liability company at the time of formation or after formation has occurred. A limited liability company is a legal entity distinct from its members.

(2) Unless a delayed effective date is specified, the existence of a limited liability company begins when the articles of organization are filed.

(3) The filing of the articles of organization by the secretary of state pursuant to 35-8-205 is conclusive proof that the organizers have satisfied all conditions precedent to the creation of a limited liability company.

History: En. Sec. 8, Ch. 120, L. 1993; amd. Sec. 5, Ch. 302, L. 1999.

Compiler's Comments

1999 Amendment: Chapter 302 in (1) in first sentence after "company" inserted "consisting of one or more members" and inserted third sentence concerning distinct legal entity; inserted (2) concerning delayed effective date; inserted (3) concerning filing as conclusive proof; and made minor changes in style. Amendment effective April 12, 1999.

35-8-202. Articles of organization. (1) The articles of organization must set forth:

(a) the name of the limited liability company that satisfies the requirements of 35-8-103;

(b) whether the company is a term company and, if so, the term specified;

(c) the address of its principal place of business in this state and, if different, its registered office and the name and address of its registered agent at the registered office in this state;

(d) (i) if the limited liability company is to be managed by a manager or managers, a statement that the company is to be managed in that fashion and the names and street addresses of managers who are to serve as managers until the first meeting of members or until their successors are elected;

(ii) if the management of a limited liability company is reserved to the members, a statement that the company is to be managed in that fashion and the names and street addresses of the initial members;

(e) whether one or more members of the company are to be liable for the limited liability company's debts and obligations under 35-8-304(3);

(f) if the limited liability company is a professional limited liability company, a statement to that effect and a statement of the professional service or services it will render; and

(g) any other provision, not inconsistent with law, that the members elect to set out in the articles, including but not limited to a statement of whether there are limitations on the authority of members or management to bind the limited liability company.

(2) It is not necessary to set out in the articles of organization any of the powers enumerated in 35-8-107.

(3) The articles of organization may not vary the nonwaivable provisions set out in 35-8-109. As to all other matters, if any provision of an operating agreement is inconsistent with the articles of organization:

(a) the operating agreement controls as to managers, members, and a member's transferee; and

(b) the articles of organization control as to a person, other than a manager, member, and member's transferee, that reasonably relies on the articles of organization to that person's detriment.

History: En. Sec. 9, Ch. 120, L. 1993; amd. Sec. 20, Ch. 229, L. 1999; amd. Sec. 6, Ch. 302, L. 1999.

Compiler's Comments

1999 Amendments — Composite Section: Chapter 229 near middle of (1)(c) substituted "registered agent" for "resident agent". Amendment effective April 2, 1999.

Chapter 302 substituted (1)(b) concerning term company for former text that read: "the latest date on which the limited liability company is to dissolve"; deleted former (1)(d) that read: "(d) a statement of whether the limited liability company is to be managed by a manager or by its members"; near middle of (1)(d)(ii) inserted "a statement that the company is to be managed in that fashion and"; inserted (1)(e) concerning liability for debts; inserted (3) concerning nonwaivable provisions and operating agreement inconsistency with articles of organization; and made minor changes in style. Amendment effective April 12, 1999.

35-8-203. Amendment of articles of organization — restatement. (1) The articles of organization of a limited liability company are amended by filing articles of amendment with the secretary of state. The articles of amendment must set forth:

(a) the name of the limited liability company;

(b) the date the articles of organization were filed; and

(c) the amendment to the articles of organization.

(2) The articles of organization may be amended as desired, so long as the amended articles of organization contain only provisions that may be lawfully contained in articles of organization at the time of making the amendment.

(3) Articles of organization may be restated at any time. Restated articles of organization must be filed with the secretary of state, must be specifically designated as such in the heading, and must state either in the heading or in an introductory paragraph the limited liability company's present name and, if it has been changed, all of its former names and the date of the filing of its articles of organization. Restated articles of organization supersede the original articles of organization and any previous amendments to the original articles of organization.

(4) An amendment to the articles of organization of a limited liability company must be in the form and manner designated by the secretary of state.

History: En. Sec. 10, Ch. 120, L. 1993; amd. Sec. 21, Ch. 229, L. 1999.

Compiler's Comments

1999 Amendment: Chapter 229 inserted third sentence in (3) providing that restated articles supersede original articles and amendments. Amendment effective April 2, 1999.

35-8-204. Execution of documents. (1) Unless otherwise specified in this chapter, a document required by this chapter to be filed with or delivered to the secretary of state must be executed:

(a) by any manager if management of the limited liability company is vested in one or more managers or by a member if management of the limited liability company is reserved to the members;

(b) if the limited liability company has not been formed, by the person or persons forming the limited liability company; or

(c) if the limited liability company is in the hands of a receiver, trustee, or other court-appointed fiduciary, by that fiduciary.

(2) The person executing the document shall sign it and state, beneath or opposite the signature, the person's name and the capacity in which the person signs.

(3) The person executing the document may do so as an attorney-in-fact. Powers of attorney relating to the execution of the document do not need to be shown to or filed with the secretary of state.

History: En. Sec. 11, Ch. 120, L. 1993.

35-8-205. Filing with secretary of state. (1) The original signed copy, together with a duplicate copy that may be either a signed, photocopied, or confirmed copy, of the articles of organization or any other document required to be filed pursuant to this chapter must be delivered to the secretary of state. If the secretary of state determines that the documents conform to the filing provisions of this chapter, the secretary of state shall, when all required filing fees have been paid:

(a) endorse on each signed original and duplicate copy the word "filed" and the date and time of its acceptance for filing;

(b) retain the signed original in the secretary of state's files; and

(c) return the duplicate copy to the person who filed it or to the person's representative.

(2) If the secretary of state is unable to make the determination required for filing by subsection (1) at the time any documents are delivered for filing, the documents are considered to have been filed at the time of delivery if the secretary of state subsequently determines that the documents as delivered conform to the filing provisions of 35-8-201 through 35-8-211.

History: En. Sec. 12, Ch. 120, L. 1993.

Cross-References

Filing fees, 35-1-1206.

35-8-206. Effect of delivery or filing of articles of organization. (1) A limited liability company is formed when the articles of organization are delivered to the secretary of state for filing.

(2) Each copy of the articles of organization stamped "filed" and marked with the filing date is conclusive evidence that all conditions precedent required to be performed by the organizers have been complied with and that the limited liability company has been legally organized and formed under this chapter.

History: En. Sec. 13, Ch. 120, L. 1993.

35-8-207. Filing of facsimile copy. (1) The secretary of state may treat a facsimile copy of a document that is required to be filed under this chapter and the signatures on the facsimile copy in the same manner as an original for purposes of this chapter. If all other requirements are met, the date of filing relates back to the date of receipt of the facsimile copy.

(2) A person who files a false document by facsimile copy is liable to the party aggrieved for three times the amount of damages resulting from the filing of the false document.

History: En. Sec. 14, Ch. 120, L. 1993; amd. Sec. 7, Ch. 290, L. 1997.

Cross-References

Assumed business name — filing of facsimile copy, 30-13-221.

Trademarks — filing of facsimile copy, 30-13-341.

Nonprofit corporations — facsimile filing, 35-2-120.

Partnerships — facsimile filing, 35-10-112.

Limited partnerships — facsimile filing, 35-12-615.

Cooperative associations — facsimile filing, 35-15-211.

35-8-208. Annual report for secretary of state. (1) A limited liability company or a foreign limited liability company authorized to transact business in this state shall deliver to the secretary of state, for filing, an annual report that sets forth:

(a) the name of the limited liability company and the state or country under whose law it is organized;

(b) the mailing address and, if different, street address of its registered office and the name of its registered agent at that office in this state;

(c) the address of its principal office;

(d) (i) if the limited liability company is managed by a manager or managers, a statement that the company is managed in that fashion and the names and street addresses of the managers;

(ii) if the management of a limited liability company is reserved to the members, a statement to that effect;

(e) if the limited liability company is a professional limited liability company, a statement that all of its members and not less than one-half of its managers are qualified persons with respect to the limited liability company.

(2) Information in the annual report must be current as of the date the annual report is executed on behalf of the limited liability company.

(3) The first annual report must be delivered to the secretary of state between January 1 and April 15 of the year following the calendar year in which a domestic limited liability company is organized or a foreign limited liability company is authorized to transact business. Subsequent annual reports must be delivered to the secretary of state between January 1 and April 15.

(4) If an annual report does not contain the information required by this section, the secretary of state shall promptly notify the reporting domestic or foreign limited liability company in writing and return the report to it for correction.

(5) The annual report must be executed by at least one member of the limited liability company and must include the street address of the member.

(6) A domestic professional limited liability company or a foreign professional limited liability company authorized to transact business in this state shall annually file before April 15, with each licensing authority having jurisdiction over a professional service of a type described in its articles of organization, a statement of qualification setting forth the names and addresses of the members and managers of the company and additional information that the licensing authority may by rule prescribe as appropriate in determining whether the company is complying with the provisions of part 13 of this chapter and rules promulgated under part 13 of this chapter. The licensing authority may charge a fee to cover the cost of filing a statement of qualification.

History: En. Sec. 15, Ch. 120, L. 1993; amd. Sec. 7, Ch. 302, L. 1999.

Compiler's Comments

1999 Amendment: Chapter 302 deleted former (1)(e) that read: "(e) the last date upon which the limited liability company is to be dissolved"; and made minor changes in style. Amendment effective April 12, 1999.

35-8-209. Administrative dissolution — rules. (1) A domestic limited liability company may be dissolved involuntarily by order of the secretary of state if the limited liability company:

(a) (i) has failed for 60 days after a change of its registered office or registered agent to file in the office of the secretary of state a statement of the change; or

(ii) has failed for 60 days to appoint and maintain a registered agent in this state;

(b) has failed for 140 days to file its annual report within the time required by law;

(c) has failed to remit any fees required by law;

(d) procured its certificate of existence through fraud; or

(e) has exceeded or abused the authority conferred upon it by law and the excesses or abuses have continued after a written notice of the alleged excesses or abuses has been received from the secretary of state by the registered agent of the limited liability company.

(2) If dissolution is sought under subsection (1)(d) or (1)(e), the secretary of state may dissolve a limited liability company when an alleged violation of subsection (1)(d) or (1)(e) is established by an order of a district court. In addition to any other person authorized by law, the secretary of state or the attorney general may maintain an action in district court to implement the provisions of this section.

History: En. Sec. 16, Ch. 120, L. 1993; amd. Sec. 13, Ch. 302, L. 1999.

Compiler's Comments

1999 Amendment: Chapter 302 inserted (1)(a)(ii) concerning failure to appoint and maintain a registered agent; inserted (1)(d) concerning fraud; inserted (1)(e) concerning excess or abuse of authority; substituted (2) concerning dissolution by secretary of state for former text that read: "(2) The secretary of state may adopt rules to establish procedures for administrative dissolutions consistent with subsection (1)"; and made minor changes in style. Amendment effective April 12, 1999.

Cross-References

Dissolution, Title 35, ch. 8, part 9.

35-8-210. Reinstatement of dissolved limited liability company. (1) The secretary of state may:

(a) reinstate a limited liability company that has been dissolved under the provisions of 35-8-209;

(b) restore to a reinstated limited liability company its right to carry on business in this state and to exercise all of its privileges and immunities.

(2) A limited liability company applying for reinstatement shall submit to the secretary of state one original and one copy of the application, executed by a person who was a member at the time of dissolution, setting forth:

(a) the name of the limited liability company;

(b) a statement that the assets of the limited liability company have not been liquidated;

(c) a statement that a majority of its members have authorized the application for reinstatement; and

(d) if its name has been legally acquired by another entity prior to its application for reinstatement, the name under which the limited liability company desires to be reinstated.

(3) The limited liability company shall submit with its application for reinstatement a certificate from the department of revenue stating that all taxes imposed pursuant to Title 15 have been paid.

(4) When all requirements are met and the secretary of state reinstates the limited liability company to its former rights, the secretary of state shall:

(a) conform and file in the office of the secretary of state reports, statements, and other instruments submitted for reinstatement;

(b) immediately issue and deliver to the reinstated limited liability company a certificate of reinstatement authorizing it to transact business; and

(c) upon demand, issue to the limited liability company one or more certified copies of the certificate of reinstatement.

(5) The secretary of state may not order a reinstatement if 5 years have elapsed since the dissolution.

(6) A restoration of limited liability company rights pursuant to this section relates back to the date the limited liability company was involuntarily dissolved, and the limited liability company is considered to have been an existing legal entity from the date of its original organization.

History: En. Sec. 17, Ch. 120, L. 1993.

35-8-211. Fees for filing, copying, and services — rules. (1) The secretary of state shall establish by rule fees for filing documents as required by this chapter.

(2) The secretary of state shall establish by rule fees for copying documents, priority handling, transmitting or filing facsimile copies, and providing computer-generated information.

(3) The fees prescribed under this section must be reasonably related to the costs of processing the documents and preparing and providing the services. The secretary of state shall maintain records sufficient to support the fees established under this section.

History: En. Sec. 18, Ch. 120, L. 1993.

35-8-212. License fee. (1) In addition to the filing fee authorized by 35-8-211, the secretary of state shall charge and collect from each foreign limited liability company a license fee of $50 at the time of filing its articles of organization.

(2) In addition to the filing fee authorized by 35-8-211, the secretary of state shall charge and collect from each foreign limited liability company a license fee of $50 at the time of filing an application for a certificate of authority to transact business.

History: En. Sec. 19, Ch. 120, L. 1993.

Cross-References

Small business licensing coordination, Title 30, ch. 16.

35-8-213 and 35-8-214 reserved.

35-8-215. Correcting filed record. (1) A limited liability company or foreign limited liability company may correct a record filed by the secretary of state if the record contains a false or erroneous statement or was defectively signed.

(2) A record must be corrected by:

(a) preparing articles of correction that:

(i) describe the record, including its filing date, or have attached a copy of the record to the articles of correction;

(ii) specify the incorrect statement and the reason that it is incorrect or the manner in which the signing was defective; and

(iii) correct the incorrect statement or defective signing; and

(b) delivering the corrected record to the secretary of state for filing.

(3) Articles of correction are effective retroactively on the effective date of the record that they correct except as to persons relying on the uncorrected record and adversely affected by the correction. As to those persons, the articles of correction are effective when filed.

History: En. Sec. 8, Ch. 302, L. 1999.

Compiler's Comments

Effective Date: Section 60, Ch. 302, L. 1999, provided: "[This act] is effective on passage and approval." Approved April 12, 1999.

35-8-216. Certificate of existence or authorization. (1) A person may request the secretary of state to furnish a certificate of existence for a limited liability company or a certificate of authorization for a foreign limited liability company.

(2) A certificate of existence for a limited liability company must set forth:

(a) the company's name;

(b) that it is organized under the laws of this state, the date of organization, whether its duration is at-will or for a specified term, and, if for a specified term, the period specified;

(c) if payment is reflected in the records of the secretary of state and if nonpayment affects the existence of the company, that all fees, taxes, and penalties owed to this state have been paid;

(d) whether its most recent annual report required by 35-8-208 has been filed with the secretary of state;

(e) that articles of termination have not been filed; and

(f) other facts of record in the office of the secretary of state if requested by the applicant.

(3) A certificate of authorization for a foreign limited liability company must set forth:

(a) the company's name used in this state;

(b) that it is authorized to transact business in this state;

(c) whether its most recent annual report required by 35-8-208 has been filed with the secretary of state;

(d) that a certificate of cancellation has not been filed; and

(e) other facts of record in the office of the secretary of state if requested by the applicant.

(4) Subject to any qualification stated in the certificate, a certificate of existence or authorization issued by the secretary of state may be relied upon as conclusive evidence as of the date of the certificate that the domestic or foreign limited liability company is in existence or is authorized to transact business in this state.

History: En. Sec. 9, Ch. 302, L. 1999.

Compiler's Comments

Effective Date: Section 60, Ch. 302, L. 1999, provided: "[This act] is effective on passage and approval." Approved April 12, 1999.

35-8-217. Liability for false statement in filed record. Subject to 35-8-304 and 35-8-306, if a record authorized or required to be filed under this chapter contains a false statement, a person who suffers loss by reliance on the statement may recover damages for the loss from the person who signed the record or caused another to sign it on that person's behalf and who knew the statement to be false at the time that the record was signed.

History: En. Sec. 10, Ch. 302, L. 1999.

Compiler's Comments

Effective Date: Section 60, Ch. 302, L. 1999, provided: "[This act] is effective on passage and approval." Approved April 12, 1999.

35-8-218. Filing by judicial act. If a person required by 35-8-204 to execute any record or document fails or refuses to do so, a person who is adversely affected by the failure or refusal may petition a district court to direct the signing of the record or document. If the court finds that it is proper for the record or document to be signed and that a designated person has failed or refused to sign the record, it shall order the secretary of state to sign and file an appropriate record or document.

History: En. Sec. 11, Ch. 302, L. 1999.

Compiler's Comments

Effective Date: Section 60, Ch. 302, L. 1999, provided: "[This act] is effective on passage and approval." Approved April 12, 1999.

35-8-219. Knowledge and notice. (1) A person knows a fact if the person has actual knowledge of the fact.

(2) A person has notice of a fact if the person:

(a) knows the fact;

(b) has received a notification of the fact; or

(c) has reason to know that the fact exists from other facts known to the person at the time in question.

(3) A person notifies or gives a notification of a fact to another by taking steps reasonably required to inform the other person, whether or not the other person knows the fact.

(4) A person receives a notification when the notification:

(a) comes to the person's attention; or

(b) is delivered at the person's place of business or at any other place held out by the person as a place for receiving communications.

(5) (a) An entity knows, has notice, or receives a notification of a fact for purposes of a particular transaction:

(i) when an individual conducting the transaction for the entity knows, has notice, or receives a notification of the fact; or

(ii) when the fact would have been brought to the individual's attention had the entity exercised reasonable diligence.

(b) (i) An entity exercises reasonable diligence if it maintains reasonable routines for communicating significant information to the individual conducting the transaction for the entity and there is reasonable compliance with the routines.

(ii) Reasonable diligence does not require an individual acting for the entity to communicate information unless the communication is part of the individual's regular duties or the individual has reason to know of the transaction and to know that the transaction would be materially affected by the information.

History: En. Sec. 12, Ch. 302, L. 1999.

Compiler's Comments

Effective Date: Section 60, Ch. 302, L. 1999, provided: "[This act] is effective on passage and approval." Approved April 12, 1999.

Part 3

Relations of Members and Managers to Persons Dealing With Limited Liability Company

35-8-301. Agency power of members and managers. (1) Except as provided in subsection (2), a member is an agent of the limited liability company for the purpose of its business or affairs and the act of a member, including but not limited to the execution of any instrument in the name of the limited liability company for apparently carrying on in the usual way the business or affairs of the limited liability company binds the limited liability company, unless the member so acting has, in fact, no authority to act for the limited liability company in the particular matter and the person with whom the member is dealing has knowledge of the fact that the member has no such authority.

(2) If the articles of organization provide that management of the limited liability company is vested in a manager or managers:

(a) a member, acting solely in the capacity as a member, may not be an agent of the limited liability company; and

(b) a manager is an agent of the limited liability company for the purpose of its business or affairs and the act of a manager, including but not limited to the execution of any instrument in the name of the limited liability company for apparently carrying on in the usual way the business or affairs of the limited liability company binds the limited liability company, unless the manager so acting has, in fact, no authority to act for the limited liability company in the particular matter and the person with whom the manager is dealing has knowledge of the fact that the manager has no such authority.

(3) An act of a manager or a member that is not apparently for carrying on in the usual way the business of the limited liability company does not bind the limited liability company, unless authorized in accordance with the articles of organization or the operating agreement, at the time of the transaction or at any other time.

(4) An act of a manager or member in contravention of a restriction on authority may not bind the limited liability company to persons having knowledge of the restriction.

History: En. Sec. 20, Ch. 120, L. 1993.

Cross-References

Service of process, Rule 4D, M.R.Civ.P. (see Title 25, ch. 20).

Agency, Title 28, ch. 10.

35-8-302. Admissions of members and managers. (1) Except as provided in subsection (2), an admission or representation made by a member concerning the business or affairs of a limited liability company within the scope of the member's authority as provided for by this chapter is evidence against the limited liability company.

(2) If the articles of organization provide that management of the limited liability company is vested in a manager or managers:

(a) an admission or representation made by a manager concerning the business or affairs of a limited liability company within the scope of the manager's authority, as provided for by this chapter, is evidence against the limited liability company; and

(b) the admission or representation of a member, acting solely in the capacity as a member, may not constitute evidence.

History: En. Sec. 21, Ch. 120, L. 1993.

35-8-303. Repealed. Sec. 56, Ch. 302, L. 1999.

History: En. Sec. 22, Ch. 120, L. 1993.

35-8-304. Liability of members and managers to third parties. (1) Except as provided in subsection (3), a person who is a member or manager, or both, of a limited liability company is not liable, solely by reason of being a member or manager, or both, under a judgment, decree or order of a court, or in any other manner, for a debt, obligation, or liability of the limited liability company, whether arising in contract, tort, or otherwise or for the acts or omissions of any other member, manager, agent, or employee of the limited liability company.

(2) The failure of a limited liability company to observe the usual company formalities or requirements relating to the exercise of its company powers or management of its business is not a ground for imposing personal liability on the members or managers of the limited liability company.

(3) All or specified members of a limited liability company are liable in their capacity as members for all or specified debts, obligations, or liabilities of the company if:

(a) a provision to that effect is contained in the articles of organization; and

(b) a member named as liable has consented in writing to the adoption of the provision or to be bound by the provision.

History: En. Sec. 23, Ch. 120, L. 1993; amd. Sec. 2, Ch. 268, L. 1997; amd. Sec. 14, Ch. 302, L. 1999.

Compiler's Comments

1999 Amendment: Chapter 302 at beginning of (1) inserted exception clause; inserted (3) concerning liability in capacity as members; and made minor changes in style. Amendment effective April 12, 1999.

Cross-References

Indemnity, Title 28, ch. 11, part 3.

35-8-305 reserved.

35-8-306. Limited liability company liability for member's or manager's conduct. A limited liability company is liable for loss or injury caused to a person, or for a penalty incurred, as a result of a wrongful act or omission or other actionable conduct of a member or manager acting in the ordinary course of business of the company or with the authority of the company.

History: En. Sec. 15, Ch. 302, L. 1999.

Compiler's Comments

Effective Date: Section 60, Ch. 302, L. 1999, provided: "[This act] is effective on passage and approval." Approved April 12, 1999.

35-8-307. Management and voting. (1) Unless the articles of organization or the operating agreement provide otherwise, in a member-managed company:

(a) each member has equal rights in the management and conduct of the company's business; and

(b) except as provided in subsection (3), any matter relating to the business of the company may be decided by a majority of the members.

(2) Unless the articles of organization or the operating agreement provide otherwise, in a manager-managed company:

(a) each manager has equal rights in the management and conduct of the company's business;

(b) except as provided in subsection (3), any matter relating to the business of the company may be exclusively decided by the manager or, if there is more than one manager, by a majority of the managers; and

(c) a manager:

(i) must be designated, appointed, elected, removed, or replaced by a vote, approval, or consent of a majority of the members; and

(ii) holds office until a successor has been elected and qualified, unless the manager sooner resigns or is removed.

(3) Unless the articles of organization or the operating agreement provide otherwise, the only matters of a member-managed or manager-managed company's business requiring the consent of all of the members are:

(a) the amendment of the operating agreement under 35-8-109;

(b) the authorization or ratification of acts or transactions under 35-8-109(3)(b)(ii) that would otherwise violate the duty of loyalty;

(c) an amendment to the articles of organization under 35-8-203;

(d) the compromise of an obligation to make a contribution under 35-8-502;

(e) the compromise, as among members, of an obligation to make a contribution or return money or other property paid or distributed in violation of this chapter;

(f) the making of interim distributions under 35-8-601, including the redemption or repurchase of an interest;

(g) the admission of a new member;

(h) the use of the company's property to redeem an interest subject to a charging order;

(i) the consent to dissolve the company under 35-8-901;

(j) a waiver of the right to have the company's business wound up and the company terminated under 35-8-901;

(k) the consent of members to merge with another entity under 35-8-1201; and

(l) the sale, lease, exchange, or other disposal of all, or substantially all, of the company's property with or without goodwill.

(4) Action requiring the consent of members or managers under this chapter may be taken without a meeting.

(5) A member or manager may appoint a proxy to vote or otherwise act for the member or manager by signing an appointment instrument, either personally or by the member's or manager's attorney-in-fact.

History: En. Sec. 16, Ch. 302, L. 1999.

Compiler's Comments

Effective Date: Section 60, Ch. 302, L. 1999, provided: "[This act] is effective on passage and approval." Approved April 12, 1999.

35-8-308 and 35-8-309 reserved.

35-8-310. General standards of member's and manager's conduct. (1) The only fiduciary duties that a member owes to a member-managed company and the other members are the duty of loyalty imposed by subsection (2) and the duty of care imposed by subsection (3).

(2) A member's duty of loyalty to a member-managed company and its other members is limited to the following:

(a) to account to the company and to hold as trustee for it any property, profit, or benefit derived by the member in the conduct or winding up of the company's business or derived from a use by the member of the company's property, including the appropriation of a company's opportunity;

(b) to refrain from dealing with the company in the conduct or winding up of the company's business on behalf of a party or as a person having an interest adverse to the company; and

(c) to refrain from competing with the company in the conduct of the company's business before the dissolution of the company.

(3) A member's duty of care to a member-managed company and the other members in the conduct of and winding up of the company's business is limited to refraining from engaging in grossly negligent or reckless conduct, intentional misconduct, or a knowing violation of law.

(4) A member shall discharge the duties under this chapter or the operating agreement to a member-managed company and its other members and exercise any rights consistently with the obligation of good faith and fair dealing.

(5) A member of a member-managed company does not violate a duty or obligation under this chapter or under the operating agreement merely because the member's conduct furthers the member's own interest.

(6) A member of a member-managed company may lend money to and transact other business with the company. As to each loan or transaction, the rights and obligations of the member are the same as those of a person who is not a member, subject to other applicable law.

(7) This section applies to a person winding up the limited liability company's business as the personal or legal representative of the last-surviving member as if the person were a member.

(8) In a manager-managed company:

(a) a member who is not also a manager owes no duties to the company or to the other members solely by reason of being a member;

(b) a manager is held to the same standards of conduct as those prescribed for members in subsections (2) through (6);

(c) a member who pursuant to the operating agreement exercises some or all of the rights of a manager in the management and conduct of the company's business is held to the standards of conduct prescribed for members in subsections (2) through (6) to the extent that the member exercises the managerial authority vested in a manager by this chapter; and

(d) a manager is relieved of liability imposed by law for violation of the standards prescribed for members by subsections (2) through (6) to the extent of the managerial authority delegated to the members by the operating agreement.

History: En. Sec. 17, Ch. 302, L. 1999.

Compiler's Comments

Effective Date: Section 60, Ch. 302, L. 1999, provided: "[This act] is effective on passage and approval." Approved April 12, 1999.

Part 4

Rights and Duties of Members and Managers

Part Cross-References

Directors and officers of business corporations, Title 35, ch. 1, part 4.

Directors and officers of nonprofit corporations, Title 35, ch. 2, part 4.

Shareholders, directors, and officers of cooperative associations, Title 35, ch. 15, part 3.

35-8-401. Repealed. Sec. 56, Ch. 302, L. 1999.
History: En. Sec. 24, Ch. 120, L. 1993.

35-8-402. Repealed. Sec. 56, Ch. 302, L. 1999.
History: En. Sec. 25, Ch. 120, L. 1993.

35-8-403. Repealed. Sec. 56, Ch. 302, L. 1999.
History: En. Sec. 26, Ch. 120, L. 1993.

35-8-404. Repealed. Sec. 56, Ch. 302, L. 1999.
History: En. Sec. 27, Ch. 120, L. 1993.

35-8-405. Records and information. (1) Unless otherwise provided in the articles of organization or a written operating agreement, a limited liability company shall keep at its principal place of business the following:

(a) a current and past list, setting forth the full name and last-known mailing address of each member and manager, if any, set forth in alphabetical order;

(b) a copy of the articles of organization and all amendments to the articles, together with executed copies of any powers of attorney pursuant to which any articles have been executed;

(c) copies of the limited liability company's federal, state, and local income tax returns and financial statements, if any, for the 3 most recent years or, if the returns and statements were not prepared for any reason, copies of the information and statements provided to or that should have been provided to the members to enable them to prepare their federal, state, and local tax returns for the period;

(d) copies of any effective written operating agreements and all amendments and copies of any written operating agreements no longer in effect;

(e) unless provided in writing in an operating agreement:

(i) a writing, if any, setting forth the amount of cash, the agreed value of other property or services contributed by each member, and the times or events upon which any additional contributions agreed to by each member are to be made;

(ii) a writing, if any, stating events that require the limited liability company to be dissolved and its affairs wound up; and

(iii) other writings, if any, prepared pursuant to a requirement in an operating agreement.

(2) (a) A member may, at the member's own expense, inspect and copy any limited liability company record, wherever the record is located, upon reasonable request during ordinary business hours.

(b) A former member and agents or attorneys of a former member must be provided access and the same right to copy records pertaining to the period that the former member was a member.

(3) Members, if the management of the limited liability company is vested in the members, or managers, if management of the limited liability company is vested in the managers, shall render, to the extent the circumstances make it just and reasonable, true and full information of all things affecting the members to any member and to the legal representative of any deceased member or of any member under legal disability.

(4) Failure of the limited liability company to keep or maintain any of the records or information required pursuant to this section may not be grounds for imposing liability on any person for the debts and obligations of the limited liability company.

History: En. Sec. 28, Ch. 120, L. 1993; amd. Sec. 18, Ch. 302, L. 1999.

Compiler's Comments

1999 Amendment: Chapter 302 inserted (2)(b) concerning former members access to records; and made minor changes in style. Amendment effective April 12, 1999.

Cross-References

Business equipment tax on business personal property, 15-6-122.

Property, 15-6-122.

Providing copy of federal tax return, 15-30-304.

35-8-406 through 35-8-409 reserved.

35-8-410. Actions by members. (1) A member may maintain an action against a limited liability company or another member for legal or equitable relief, with or without an accounting as to the company's business, to enforce:

(a) the member's rights under the operating agreement;

(b) the member's rights under this chapter; or

(c) the rights and otherwise protect the interests of the member, including rights and interests arising independently of the member's relationship to the company.

(2) The accrual of a right of action under this section and any time limits for asserting the right of action for a remedy under this section are governed by the laws of this state. A right to an accounting upon a dissolution and winding up does not revive a claim barred by law.

History: En. Sec. 19, Ch. 302, L. 1999.

Compiler's Comments

Effective Date: Section 60, Ch. 302, L. 1999, provided: "[This act] is effective on passage and approval." Approved April 12, 1999.

35-8-411. Continuation of term company after expiration of specified term. (1) If a term company is continued after the expiration of the specified term, the rights and duties of the members and managers remain the same as they were at the expiration of the term except to the extent inconsistent with rights and duties of members and managers of an at-will company.

(2) If the members in a member-managed term company or the managers in a manager-managed term company continue the business without any winding up of the business of the company, it continues as an at-will company.

History: En. Sec. 20, Ch. 302, L. 1999.

Compiler's Comments

Effective Date: Section 60, Ch. 302, L. 1999, provided: "[This act] is effective on passage and approval." Approved April 12, 1999.

Part 5
Finance

35-8-501. Contributions to capital. An interest in a limited liability company may be issued in exchange for tangible or intangible property or other benefit to the company, including money, promissory notes, services performed, or other agreements to contribute cash or property or contracts for services to be performed.

History: En. Sec. 29, Ch. 120, L. 1993; amd. Sec. 21, Ch. 302, L. 1999.

Compiler's Comments

1999 Amendment: Chapter 302 before "property" inserted "tangible or intangible"; after "property" inserted "or other benefit to the company, including money, promissory notes"; substituted "agreements" for "a promissory note or other obligation"; at end substituted "contracts for services to be performed" for "to perform services"; and made minor changes in style. Amendment effective April 12, 1999.

35-8-502. Liability for contribution. (1) A promise by a member to contribute to the limited liability company is not enforceable unless set out in a writing signed by the member.

(2) (a) Except as provided in the articles of organization or the operating agreement, a member is obligated to the limited liability company to perform any enforceable promises to contribute cash or property or to perform services even if the member is unable to perform because of death, disability, or other reason.

(b) If a member does not make the required contribution of property or services, the member is obligated, at the option of the limited liability company, to contribute cash equal to that portion of value or the stated contribution that has not been made.

(3) (a) Unless otherwise provided in the articles of organization or the operating agreement, the obligation of a member to make a contribution or return money or other property paid or distributed in violation of this chapter may be compromised only with the unanimous consent of the members.

(b) A creditor of a limited liability company who extends credit or otherwise acts in reliance on an obligation described in subsection (1), and without notice of any compromise under 35-8-307(3)(d), may enforce the original obligation.

History: En. Sec. 30, Ch. 120, L. 1993; amd. Sec. 22, Ch. 302, L. 1999.

Compiler's Comments

1999 Amendment: Chapter 302 substituted (3)(b) concerning extension of credit for former text that read: "Notwithstanding the compromise, the original obligation may be enforced by a creditor of a limited liability company who extends credit or otherwise acts in reliance on the obligation after the member signs a writing that reflects the obligation and before the amendment or compromise." Amendment effective April 12, 1999.

35-8-503. Sharing of profits and losses. Unless otherwise provided in the articles of organization or a written operating agreement, each member must be repaid that member's contributions to capital and share equally in the profits, losses, and surpluses remaining after all liabilities, including those to members, are satisfied.

History: En. Sec. 31, Ch. 120, L. 1993.

35-8-504. Member's and manager's rights to payments and reimbursement. (1) A limited liability company shall reimburse a member or manager for payments made and indemnify a member or manager for liabilities incurred by the member or manager in the ordinary course of the business of the company or for the preservation of the company's business or property.

(2) A limited liability company shall reimburse a member for an advance to the company beyond the amount of contribution that the member agreed to make.

(3) A payment or advance made by a member that gives rise to an obligation of a limited liability company under subsection (1) or (2) constitutes a loan to the company upon which interest accrues from the date of the payment or advance.

(4) A member is not entitled to remuneration for services performed for a limited liability company except for reasonable compensation for services rendered in winding up the business of the company.

History: En. Sec. 23, Ch. 302, L. 1999.

Compiler's Comments

Effective Date: Section 60, Ch. 302, L. 1999, provided: "[This act] is effective on passage and approval." Approved April 12, 1999.

Part 6
Distributions

Part Cross-References

Distribution and withdrawals — limited partnerships, Title 35, ch. 12, part 10.

35-8-601. Sharing of distributions. Except as provided in 35-8-905, distributions of cash or other assets of a limited liability company must be shared among the members and among classes of members in the manner provided in writing in the articles of organization or the operating agreement. If the articles of organization or the operating agreement does not so provide in writing, each member shall share equally in any distribution. A member is entitled to receive distributions described in this section from a limited liability company to the extent and at the times or upon the happening of the events specified in the articles of organization or the operating agreement or at the times determined by the members or managers pursuant to 35-8-307(3)(f).

History: En. Sec. 32, Ch. 120, L. 1993; amd. Sec. 24, Ch. 302, L. 1999.

Compiler's Comments

1999 Amendment: Chapter 302 at beginning in exception clause deleted reference to 35-8-602; and at end substituted reference to 35-8-307(3)(f) for reference to 35-8-403. Amendment effective April 12, 1999.

35-8-602. Repealed. Sec. 56, Ch. 302, L. 1999.

History: En. Sec. 33, Ch. 120, L. 1993.

35-8-603. Distribution in kind. Except as provided in the articles of organization or the operating agreement:

(1) a member, regardless of the nature of the member's contribution, may not demand or receive any distribution from a limited liability company in any form other than cash; and

(2) a member may not be compelled to accept from a limited liability company a distribution of any asset in kind to the extent that the percentage of the asset distributed to the members exceeds a percentage of that asset that is equal to the percentage in which the member shares in distributions from the limited liability company.

History: En. Sec. 34, Ch. 120, L. 1993.

35-8-604. Distributions. (1) A distribution may not be made if, after giving effect to the distribution:

(a) the limited liability company would not be able to pay its debts as they become due in the usual course of business; or

(b) the limited liability company's total assets would be less than the sum of its total liabilities plus, unless the articles of organization or the operating agreement provides otherwise, the amount that would be needed, if the limited liability company were to be dissolved at the time of the distribution, to satisfy the preferential rights of other members upon dissolution that are superior to the rights of the member receiving the distribution.

(2) The limited liability company may base a determination that a distribution is not prohibited under subsection (1) on either:

(a) financial statements prepared on the basis of accounting practices and principles that are reasonable under the circumstances; or

(b) a fair valuation or other method that is reasonable under the circumstances.

(3) Except as provided in subsection (5), the effect of a distribution under subsection (1) is measured as of:

(a) the date the distribution is authorized if the payment occurs within 120 days after the date of authorization; or

(b) the date payment is made if it occurs more than 120 days after the date of authorization.

(4) A limited liability company's indebtedness to a member incurred by reason of a distribution to be made to that member in accordance with this section is at parity with the limited liability company's indebtedness to its general unsecured creditors, except as otherwise provided by agreement.

(5) For purposes of this section:

(a) if terms of indebtedness provide that payment of principal and interest is to be made only if and to the extent that payment of a distribution to members could then be made under this section, indebtedness of a limited liability company, including indebtedness issued as a distribution, is not a liability for purposes of determinations made under subsection (2); and

(b) if the indebtedness is issued as a distribution, each payment of principal or interest on the indebtedness is treated as a distribution, the effect of which is measured on the date the payment is actually made.

History: En. Sec. 35, Ch. 120, L. 1993.

35-8-605. Liability upon wrongful distribution. (1) A member or manager who votes for or assents to a distribution in violation of the articles of organization, the operating agreement, or 35-8-604 is personally liable to the limited liability company, but not to other persons, for the amount of the distribution that exceeds what could have been distributed without violating 35-8-604 or the articles of organization or the operating agreement if it is established that the member or manager did not perform the member's or manager's duties in compliance with 35-8-310.

(2) A member of a manager-managed company who knew a distribution was made in violation of 35-8-604, the articles of organization, or the operating agreement is personally liable to the company, but only to the extent that the distribution received by that member exceeded the amount that could have properly been paid to that member under 35-8-604.

(3) A member or manager against whom an action is brought under this section may implead in the action:

(a) other members and managers who voted for or assented to the distribution in violation of subsection (1) and may compel contribution from them; and

(b) members who received a distribution in violation of subsection (2) and may compel a contribution from the members in the amount received in violation of subsection (2).

(4) A proceeding under this section is barred unless it is commenced within 2 years after the date of the distribution.

History: En. Sec. 36, Ch. 120, L. 1993; amd. Sec. 25, Ch. 302, L. 1999.

Compiler's Comments

1999 Amendment: Chapter 302 at end of (1) substituted "perform the member's or manager's duties in compliance with 35-8-310" for "act in compliance with 35-8-604"; substituted (2) concerning knowing distribution violative of 35-8-604 for former text that read: "(2) A member or manager held liable under subsection (1) for an unlawful distribution is entitled to contribution:

(a) from each other member or manager who voted for or assented to the unlawful distribution; and

(b) from each member for the amount the member received, knowing that the distribution was made in violation of 35-8-604 or the articles of organization or the operating agreement"; inserted (3) concerning impleading; inserted (4) establishing 2-year limitations period; and made minor changes in style. Amendment effective April 12, 1999.

35-8-606. Right to distribution. Subject to 35-8-905, when a member becomes entitled to receive a distribution, the member has the status of and is entitled to all remedies available to a creditor of the limited liability company with respect to the distribution.

History: En. Sec. 37, Ch. 120, L. 1993.

Part 7

Ownership and Transfer of Property

Part Cross-References

Property rights of partner, Title 35, ch. 10, part 5.

35-8-701. Ownership of limited liability company property. (1) Property transferred to or otherwise acquired by a limited liability company becomes property of the limited liability company. A member has no interest in specific limited liability company property.

(2) Property may be acquired, held, and conveyed in the name of the limited liability company. Any estate in real property may be acquired in the name of the limited liability company, and title to any estate acquired must vest in the limited liability company rather than in the members individually.

History: En. Sec. 38, Ch. 120, L. 1993.

35-8-702. Transfer of real property. (1) Except as provided in subsection (5), title to property of the limited liability company that is held in the name of the limited liability company may be transferred by an instrument of transfer executed by any member in the name of the limited liability company.

(2) Title to property of the limited liability company that is held in the name of one or more members or managers may be transferred by an instrument of transfer executed by the persons in whose name title is held if there is an indication in the instrument transferring title to the property to them of:

(a) their capacity as members or managers of a limited liability company; or

(b) the existence of a limited liability company, even if the name of the limited liability company is not indicated.

(3) Property transferred under subsection (1) or (2) may be recovered by the limited liability company if it proves that the act of the person executing the instrument of transfer did not bind the limited liability company under 35-8-301 unless the property has been transferred by the initial transferee or a person claiming through the initial transferee to a subsequent transferee who gives value without having notice that the person who executed the instrument of initial transfer lacked authority to bind the limited liability company.

(4) Title to property of the limited liability company may be transferred free of any claims of the limited liability company or its members by the persons in whose name title is held to a transferee who gives value without having notice that it is property of a limited liability company if title is held in the name of one or more persons other than the limited liability company and there is no indication in the instrument transferring title to the property to them of:

(a) their capacity as members or managers of a limited liability company; or

(b) the existence of a limited liability company.

(5) If the articles of organization provide that management of the limited liability company is vested in a manager or managers:

(a) title to property of the limited liability company that is held in the name of the limited liability company may be transferred by an instrument of transfer executed by any manager in the name of the limited liability company; and

(b) a member, acting solely in the capacity of a member, may not transfer title as provided in subsection (5)(a).

History: En. Sec. 39, Ch. 120, L. 1993.

35-8-703. Nature of distributional interest. (1) A member is not a co-owner of, and does not have a transferable interest in, property of a limited liability company.

(2) A member's distributional interest in a limited liability company is personal property and, subject to the provisions of 35-8-707, may be transferred in whole or in part.

(3) An operating agreement may provide that a member's distributional interest may be evidenced by a certificate of the interest issued by the limited liability company and, subject to the provisions of 35-8-707, may also provide for the transfer of any interest represented by the certificate.

History: En. Sec. 40, Ch. 120, L. 1993; amd. Sec. 26, Ch. 302, L. 1999.

Compiler's Comments

1999 Amendment — Code Commissioner Correction: Chapter 302 substituted current text concerning the nature of a distributional interest for former text that read: "A membership interest is personal property." In (2) and (3) the code commissioner, pursuant to the authority contained in sec. 99, Ch. 51, L. 1999, substituted references to 35-8-707 for references to "[section 25]", amending 35-8-605. Amendment effective April 12, 1999.

35-8-704. Repealed. Sec. 56, Ch. 302, L. 1999.

History: En. Sec. 41, Ch. 120, L. 1993.

35-8-705. Rights of judgment creditor. (1) On application to a court of competent jurisdiction by any judgment creditor of a member, the court may charge the distributional interest of the member with payment of the unsatisfied amount of judgment, with interest. To the extent charged, the judgment creditor has only the rights of an assignee of the distributional interest. This chapter does not deprive a member of the benefit of any exemption laws applicable to a distributional interest.

(2) The court may appoint a receiver of the share of the distributions due or to become due to a judgment debtor and make all other orders, directions, accounts, and inquiries that the judgment debtor may have made or that the circumstances require to give effect to the charging order.

(3) A charging order constitutes a lien on the judgment debtor's distributional interest. The court may order a foreclosure of a lien on a distributional interest subject to the charging order at any time. A purchaser of the distributional interest at a foreclosure sale has the rights of a transferee.

(4) At any time before foreclosure, a distributional interest that is charged may be redeemed:

(a) by the judgment debtor;

(b) by one or more of the other members with property other than the company's; or

(c) with the company's property if permitted by the operating agreement.

(5) This section provides the exclusive remedy by which a judgment creditor of a member or a transferee may satisfy a judgment out of the judgment debtor's distributional interest in a limited liability company.

History: En. Sec. 42, Ch. 120, L. 1993; amd. Sec. 28, Ch. 302, L. 1999.

Compiler's Comments

1999 Amendment: Chapter 302 in three places in (1) substituted "distributional interest" for "membership interest"; inserted (2) concerning a receiver; inserted (3) concerning a charging order as a lien; inserted (4) concerning redemption of distributional interest; inserted (5) concerning exclusive remedy; and made minor changes in style. Amendment effective April 12, 1999.

35-8-706. Repealed. Sec. 56, Ch. 302, L. 1999.

History: En. Sec. 43, Ch. 120, L. 1993.

35-8-707. Transfer of distributional interest — rights of transferee. (1) A transfer of a member's distributional interest does not entitle the transferee to become a member or to exercise any rights of a member. A transfer entitles the transferee to receive, to the extent transferred, only the distributions to which the transferor would be entitled.

(2) A transferee of a distributional interest may become a member of a limited liability company if and to the extent that the transferor gives the transferee the right in accordance with authority described in writing in the operating agreement or if all other members consent.

(3) A transferee who has become a member, to the extent transferred, has the rights and powers, and is subject to the restrictions and liabilities, of a member under the operating agreement of a limited liability company and the provisions of this chapter. A transferee who becomes a member also is liable for the transferor member's obligations to make contributions under 35-8-502 and for obligations under 35-8-605 to return unlawful distributions, but the transferee is not obligated for the transferor member's liabilities unknown to the transferee at the time that the transferee becomes a member.

(4) Whether or not a transferee of a distributional interest becomes a member under subsection (2), the transferor is not released from liability to the limited liability company under the operating agreement or the provisions of this chapter.

(5) A transferee who does not become a member is not entitled to participate in the management or conduct of the limited liability company's business, may not require access to information concerning the company's transactions, and may not inspect or copy any of the company's records.

(6) A transferee who does not become a member is entitled to:

(a) receive, in accordance with the transfer, distributions to which the transferor would otherwise be entitled;

(b) receive, upon dissolution and winding up of the limited liability company's business:

(i) in accordance with the transfer, the net amount otherwise distributable to the transferor; and

(ii) a statement of account only from the date of the latest statement of account agreed to by all the members; and

(c) seek under 35-8-902(2) a judicial determination that it is equitable to dissolve and wind up the company's business.

(7) A limited liability company does not have to give effect to a transfer until it has notice of the transfer.

History: En. Sec. 27, Ch. 302, L. 1999.

Compiler's Comments

Effective Date: Section 60, Ch. 302, L. 1999, provided: "[This act] is effective on passage and approval." Approved April 12, 1999.

Part 8

Admission and Withdrawal of Members

Part Cross-References

Admission of additional limited partners, 35-12-701.

Admission of general partners, 35-12-801.

35-8-801. Repealed. Sec. 56, Ch. 302, L. 1999.

History: En. Sec. 44, Ch. 120, L. 1993.

Compiler's Comments

1999 Purported Amendment: Chapter 302 purported to amend this section, but the section was repealed by sec. 56, Ch. 302, L. 1999.

35-8-802. Repealed. Sec. 56, Ch. 302, L. 1999.

History: En. Sec. 45, Ch. 120, L. 1993.

35-8-803. Events causing member's dissociation. A member is dissociated from a limited liability company upon the occurrence of any of the following events:

(1) the company's having notice of the member's express will to withdraw upon the date of notice or on a later date if specified by the member;

(2) an event agreed to in the operating agreement as causing the member's dissociation;

(3) upon transfer of all of a member's distributional interest, other than a transfer for security purposes or pursuant to a court order charging the member's distributional interest that has not been foreclosed;

(4) the member's expulsion pursuant to the operating agreement;

(5) the member's expulsion by unanimous vote of the other members if:

(a) it is unlawful to carry on the company's business with the member;

(b) there has been a transfer of substantially all of the member's distributional interest, other than a transfer for security purposes or pursuant to a court order charging the member's distributional interest, which has not been foreclosed;

(c) within 90 days after the company notifies a corporate member that it will be expelled because it has filed a certificate of dissolution or the equivalent, its charter has been revoked, or its right to conduct business has been suspended by the jurisdiction of its incorporation, the member fails to obtain a revocation of the certificate of dissolution or a reinstatement of its charter or its right to conduct business; or

(d) a partnership or a limited liability company that is a member has been dissolved, and its business is being wound up;

(6) on application by the company or another member, the member's expulsion by judicial determination because the member:

(a) engaged in wrongful conduct that adversely and materially affected the company's business;

(b) willfully or persistently committed a material breach of the operating agreement or of a duty owed to the company or the other members under 35-8-310; or

(c) engaged in conduct relating to the company's business that makes it not reasonably practicable to carry on the business with the member;

(7) the member's:

(a) becoming a debtor in bankruptcy;

(b) executing an assignment for the benefit of creditors;

(c) seeking, consenting to, or acquiescing in the appointment of a trustee, receiver, or liquidator of all or substantially all of the member's property; or

(d) failing, within 90 days after the appointment, to have vacated or stayed the appointment of a trustee, receiver, or liquidator of the member or of all or substantially all of the member's property obtained without the member's consent or acquiescence or failing within 90 days after the expiration of stay to have the appointment vacated;

(8) in the case of a member who is an individual:

(a) the member's death;

(b) the appointment of a guardian or general conservator for the member; or

(c) a judicial determination that the member has otherwise become incapable of performing the member's duties under the operating agreement;

(9) in the case of a member that is a trust or is acting as a member by virtue of being a trustee of a trust, distribution of the trust's entire rights to receive distributions from the company, except that this subsection does not apply to the substitution of a successor trustee;

(10) in the case of a member that is an estate or is acting as a member by virtue of being a personal representative of an estate, distribution of the estate's entire rights to receive distributions from the company, but not merely the substitution of a successor personal representative; or

(11) termination of the existence of a member if the member is not an individual, estate, or trust other than a business trust.

History: En. Sec. 30, Ch. 302, L. 1999.

Compiler's Comments

Effective Date: Section 60, Ch. 302, L. 1999, provided: "[This act] is effective on passage and approval." Approved April 12, 1999.

35-8-804. Member's power to dissociate — wrongful dissociation. (1) Unless otherwise provided in the operating agreement, a member has the power to dissociate from a limited liability company at any time, rightfully or wrongfully, pursuant to 35-8-803(1).

(2) If the operating agreement has not eliminated a member's power to dissociate, the member's dissociation from a limited liability company is wrongful only if:

(a) it is in breach of an express provision of the agreement; or

(b) before the expiration of the specified term of a term company:

(i) the member withdraws by express will;

(ii) the member is expelled by judicial determination under 35-8-803(6);

(iii) the member is dissociated by becoming a debtor in bankruptcy; or

(iv) in the case of a member that is not an individual, trust, other than a business trust, or estate, the member is expelled or otherwise dissociated because it willfully dissolved or terminated its existence.

(3) A member that wrongfully dissociates from a limited liability company is liable to the company and to the other members for damages caused by the dissociation. The liability is in addition to any other obligation of the member to the company or to the other members.

(4) If a limited liability company does not dissolve and wind up its business as a result of a member's wrongful dissociation under subsection (2), damages sustained by the company for the wrongful dissociation must be offset against distributions otherwise due the member after the dissociation.

History: En. Sec. 31, Ch. 302, L. 1999.

Compiler's Comments

Effective Date: Section 60, Ch. 302, L. 1999, provided: "[This act] is effective on passage and approval." Approved April 12, 1999.

35-8-805. Effect of member's dissociation. (1) Upon a member's dissociation:

(a) in an at-will company, the company shall cause the dissociated member's distributional interest to be purchased as provided under 35-8-808 and 35-8-809; and

(b) in a term company:

(i) if the company dissolves and winds up its business on or before the expiration of its specified term, part 9 of this chapter applies to determine the dissociated member's rights to distributions; and

(ii) if the company does not dissolve and wind up its business on or before the expiration of its specified term, the company shall ensure that the dissociated member's distributional interest is purchased under 35-8-808 and 35-8-809 on the date that was specified for the expiration of the term at the time of the member's dissociation.

(2) Upon a member's dissociation from a limited liability company:

(a) the member's right to participate in the management and conduct of the company's business terminates, except as otherwise provided in 35-8-903, and the member ceases to be a member and must be treated the same as a transferee of a member;

(b) the member's duty of loyalty under 35-8-310(2)(c) terminates; and

(c) the member's duty of loyalty under 35-8-310(2)(a) and (2)(b) and duty of care under 35-8-310(3) continue only with regard to matters arising and events occurring before the member's dissociation, unless the member participates in winding up the company's business pursuant to 35-8-903.

History: En. Sec. 32, Ch. 302, L. 1999.

Compiler's Comments

Effective Date: Section 60, Ch. 302, L. 1999, provided: "[This act] is effective on passage and approval." Approved April 12, 1999.

35-8-806 and 35-8-807 reserved.

35-8-808. Company purchase of distributional interest. (1) A limited liability company shall purchase a distributional interest of a:

(a) member of an at-will company for its fair value determined as of the date of the member's dissociation if the member's dissociation does not result in a dissolution and winding up of the company's business under 35-8-901; or

(b) member of a term company for its fair value determined as of the date of the expiration of the specified term that existed on the date of the member's dissociation if the expiration of the specified term does not result in a dissolution and winding up of the company's business under 35-8-903.

(2) A limited liability company shall deliver a purchase offer to the dissociated member whose distributional interest is entitled to be purchased not later than 30 days after the date determined under subsection (1). The purchase offer must be accompanied by:

(a) a statement of the company's assets and liabilities as of the date determined under subsection (1);

(b) the latest available balance sheet and income statement, if any; and

(c) an explanation of how the estimated amount of the payment was calculated.

(3) If the price and other terms of a purchase of a distributional interest are fixed or are to be determined by the operating agreement, the price and terms so fixed or determined govern the purchase unless the purchaser defaults. If a default occurs, the dissociated member is entitled to commence a proceeding to have the company dissolved under 35-8-902(1)(d).

(4) If an agreement to purchase the distributional interest is not made within 120 days after the date determined under subsection (1), the dissociated member, within another 120 days, may commence a proceeding against the limited liability company to enforce the purchase. The company, at its expense, shall notify in writing all of the remaining members and any other person that the court directs of the commencement of the proceeding. The jurisdiction of the court in which a proceeding is commenced under this subsection is plenary and exclusive.

(5) The court shall determine the fair value of the distributional interest in accordance with the standards set forth in 35-8-809, together with the terms for the purchase. Upon making these determinations, the court shall order the limited liability company to purchase or cause the purchase of the interest.

(6) Damages for wrongful dissociation under 35-8-804(2) and all other amounts owing, whether or not currently due, from the dissociated member to a limited liability company, must be offset against the purchase price.

History: En. Sec. 33, Ch. 302, L. 1999.

Compiler's Comments

Effective Date: Section 60, Ch. 302, L. 1999, provided: "[This act] is effective on passage and approval." Approved April 12, 1999.

35-8-809. Court action to determine fair value of distributional interest. (1) In an action brought to determine the fair value of a distributional interest in a limited liability company, the court shall:

(a) determine the fair value of the interest, considering among other relevant evidence the going concern value of the company, any agreement among some or all of the members fixing the price or specifying a formula for determining value of distributional interests for any other purpose, the recommendations of any appraiser appointed by the court, and any legal constraints on the company's ability to purchase the interest;

(b) specify the terms of the purchase, including, if appropriate, terms for installment payments, subordination of the purchase obligation to the rights of the company's other creditors, security for a deferred purchase price, and a covenant not to compete or other restriction on a dissociated member; and

(c) require the dissociated member to deliver an assignment of the interest to the purchaser upon receipt of the purchase price or the first installment of the purchase price.

(2) After the dissociated member delivers the assignment, the dissociated member has no further claim against the company, its members, officers, or managers, if any, other than a claim to any unpaid balance of the purchase price or a claim under any agreement with the company or the remaining members that is not terminated by the court.

(3) If the purchase is not completed in accordance with the court's specified terms, the company is to be dissolved upon application under

35-8-902(1)(d). If a limited liability company is so dissolved, the dissociated member has the same rights and priorities in the company's assets as if the sale of the distributional interest had not been ordered.

(4) If the court finds that a party to the proceeding acted arbitrarily, vexatiously, or not in good faith, it may award one or more other parties reasonable expenses, including attorney fees and the expenses of appraisers or other experts, incurred in the proceeding. The finding may be based on the company's failure to make an offer to pay or to comply with 35-8-808(2).

(5) Interest must be paid on the amount awarded from the date determined under 35-8-808(1) to the date of payment.

History: En. Sec. 34, Ch. 302, L. 1999.

Compiler's Comments

Effective Date: Section 60, Ch. 302, L. 1999, provided: "[This act] is effective on passage and approval." Approved April 12, 1999.

35-8-810 reserved.

35-8-811. Dissociated member's power to bind limited liability company. For 2 years after a member dissociates without the dissociation resulting in a dissolution and winding up of a limited liability company's business, the company, including a surviving company under part 12 of this chapter, is bound by an act of the dissociated member that would have bound the company under 35-8-301 before dissociation only if at the time of entering into the transaction the other party:

(1) reasonably believed that the dissociated member was then a member;

(2) did not have notice of the member's dissociation; and

(3) is not considered to have had notice under 35-8-812.

History: En. Sec. 35, Ch. 302, L. 1999.

Compiler's Comments

Effective Date: Section 60, Ch. 302, L. 1999, provided: "[This act] is effective on passage and approval." Approved April 12, 1999.

35-8-812. Statement of dissociation. (1) A dissociated member or a limited liability company shall file in the office of the secretary of state a statement of dissociation, stating the name of the company and that the member is dissociated from the company.

(2) For the purposes of 35-8-301 and 35-8-811, a person not a member is considered to have notice of the dissociation 90 days after the statement of dissociation is filed.

History: En. Sec. 36, Ch. 302, L. 1999.

Compiler's Comments

Effective Date: Section 60, Ch. 302, L. 1999, provided: "[This act] is effective on passage and approval." Approved April 12, 1999.

Part 9

Dissolution

Part Cross-References

Reorganization and dissolution — close corporations, Title 35, ch. 9, part 4.

Dissolution and winding up — partnerships, Title 35, ch. 10, part 6.

Dissolution — limited partnerships, Title 35, ch. 12, part 12.

35-8-901. Dissolution. (1) A limited liability company is dissolved and its affairs must be wound up when one of the following occurs:

(a) at the time or upon the occurrence of events specified in writing in the articles of organization or operating agreement;

(b) consent of the number or percentage of members specified in the operating agreement;

(c) an event that makes it unlawful for all or substantially all of the business of the company to be continued, but any cure of illegality within 90 days after notice to the company of the event is effective retroactively to the date of the event for purposes of this section;

(d) the expiration of the term specified in the articles of organization; or

(e) entry of a decree of judicial dissolution under 35-8-902.

(2) Subject to subsection (3), a limited liability company continues after dissolution only for the purpose of winding up its business.

(3) At any time after the dissolution of a limited liability company and before the winding up of its business is completed, the members, including a dissociated member whose dissociation caused the dissolution, may unanimously waive the right to have the company's business wound up and the company terminated. In that case:

(a) the limited liability company resumes carrying on its business as if dissolution had never occurred, and any liability incurred by the company or a member after the dissolution and before the waiver is determined as if the dissolution had never occurred; and

(b) the rights of a third party accruing under the provisions of 35-8-904(1) or arising out of conduct by the third party in reliance on the dissolution before the third party knew or received a notification of the waiver are not adversely affected.

History: En. Sec. 46, Ch. 120, L. 1993; amd. Sec. 37, Ch. 302, L. 1999.

Compiler's Comments

1999 Amendment: Chapter 302 substituted (1)(b) and (1)(c) concerning consent and unlawful events for former (2)and (3) that read: "(2) the written consent of all members;

(3) an event of dissociation of a member, unless the business of the limited liability company is continued by the consent of all the remaining members within 90 days following the occurrence of an event of dissociation or as otherwise provided in writing in the articles of organization or operating agreement"; inserted (1)(d) concerning expiration of term; inserted (2) concerning winding up; inserted (3) concerning waiver of winding up; and made minor changes in style. Amendment effective April 12, 1999.

35-8-902. Judicial dissolution. (1) On application by or for a member or a dissociated member, a district court may order dissolution of a limited liability company, or other appropriate relief, when:

(a) the economic purpose of the company is likely to be unreasonably frustrated;

(b) another member has engaged in conduct relating to the company's business that makes it not reasonably practicable to carry on the company's business with that member remaining as a member;

(c) it is not otherwise reasonably practicable to carry on the company's business in conformity with the articles of organization and the operating agreement;

(d) the company failed to purchase the petitioner's distributional interest as required by 35-8-805; or

(e) the members or managers in control of the company have acted, are acting, or will act in a manner that is illegal, oppressive, fraudulent, or unfairly prejudicial to the petitioner.

(2) On application by a transferee of a member's interest, a district court may determine that it is equitable to wind up the company's business:

(a) after the expiration of the specified term, if the company was for a specified term at the time that the applicant became a transferee by member dissociation, transfer, or entry of a charging order that gave rise to the transfer; or

(b) at any time, if the company was at will at the time that the applicant became a transferee by member dissociation, transfer, or entry of a charging order that gave rise to the transfer.

History: **En. Sec. 47, Ch. 120, L. 1993; amd. Sec. 38, Ch. 302, L. 1999.**

Compiler's Comments

1999 Amendment: Chapter 302 in (1) near beginning after "member" inserted "or a dissociated member"; inserted (1)(a) concerning economic purpose; inserted (1)(b) concerning member conduct; substituted (1)(c) concerning practicality for former text that read: "it is not reasonably practicable to carry on the business in conformity with the articles of organization or operating agreement"; inserted (1)(d) concerning purchase of distributional interest; inserted (1)(e) concerning illegal action; inserted (2) concerning court determination of equitable wind up; and made minor changes in style. Amendment effective April 12, 1999.

35-8-903. Winding up. (1) Except as otherwise provided in the articles of organization or the operating agreement, the business or affairs of the limited liability company may be wound up:

(a) by the members or managers who have authority under 35-8-304 to manage the limited liability company prior to dissolution; or

(b) if one or more of the members or managers have engaged in wrongful conduct or upon other cause shown, by the district court on application of any member or any member's legal representative or assignee.

(2) The persons winding up the business or affairs of the limited liability company may, in the name of and for and on behalf of the limited liability company:

(a) prosecute and defend suits;

(b) settle and close the business of the limited liability company;

(c) dispose of and transfer the property of the limited liability company;

(d) discharge the liabilities of the limited liability company; and

(e) distribute to the members any remaining assets of the limited liability company.

History: **En. Sec. 48, Ch. 120, L. 1993.**

35-8-904. Agency power and liability of members or managers after dissolution. (1) Except as provided in subsections (3) through (5), after an event causing dissolution of the limited liability company, a member may bind the limited liability company:

(a) by an act appropriate for winding up the limited liability company's affairs or completing transactions unfinished at dissolution; and

(b) by any transaction that would have bound the limited liability company, if it had not been dissolved, if the other party to the transaction does not have notice of the dissolution.

(2) The filing of the articles of termination is presumed to constitute notice of dissolution for purposes of subsection (1)(b).

(3) An act of a member that would not otherwise be binding on the limited liability company under subsection (1) is binding if it is authorized by the limited liability company.

(4) An act of a member that would be binding under subsection (1) or would be otherwise authorized and that is in contravention of a restriction on authority may not bind the limited liability company to persons having knowledge of the restriction.

(5) If the articles of organization vest management of the limited liability company in managers, a manager may exercise the authority of a member under subsection (1) and a member may not exercise the authority if the member is acting solely in the capacity of a member.

(6) A member or manager who, with knowledge of the dissolution, subjects a limited liability company to liability by an act that is not appropriate for the winding up of the company's business is liable to the company for any damage caused by the act.

History: En. Sec. 49, Ch. 120, L. 1993; amd. Sec. 39, Ch. 302, L. 1999.

Compiler's Comments

1999 Amendment: Chapter 302 in (2) substituted "termination" for "dissolution"; and inserted (6) concerning liability for inappropriate act. Amendment effective April 12, 1999.

35-8-905. Distribution of assets. Upon the winding up of a limited liability company, the assets must be distributed as follows:

(1) to creditors, including members and managers who are creditors, to the extent otherwise permitted by law, in satisfaction of liabilities of the limited liability company, whether by payment or the making of reasonable provision for payment, other than liabilities to members for distributions under 35-8-605;

(2) unless otherwise provided in the articles of organization or an operating agreement, to members and former members in satisfaction of liabilities for distributions under 35-8-605; and

(3) unless otherwise provided in writing in the articles of organization or a written operating agreement, to members first for the return of their contributions and second respecting their limited liability company interests, in the proportions in which the members share in distributions.

History: En. Sec. 50, Ch. 120, L. 1993; amd. Sec. 40, Ch. 302, L. 1999.

Compiler's Comments

1999 Amendment: Chapter 302 at end of (1) and (2) substituted "35-8-605" for "35-8-602 or 35-8-603"; in (3) after "provided" inserted "in writing" and before "operating" inserted "written"; and made minor changes in style. Amendment effective April 12, 1999.

35-8-906. Articles of termination. (1) At any time after dissolution and winding up, a limited liability company may terminate its existence by filing with the secretary of state articles of termination stating:

(a) the name of the limited liability company;

(b) the reason for filing the articles of termination;

(c) the effective date of the articles of termination, which must be a date certain, if they are not to be effective upon the filing;

(d) the name of the agent or agents authorized to receive service of process after dissolution or termination of the limited liability company;

(e) the name of the person or persons authorized to wind up the business and authorized to execute documents on behalf of the limited liability company;

(f) the date of the dissolution; and

(g) that the company's business has been wound up and the legal existence of the company has been terminated.

(2) The existence of a limited liability company is terminated upon the filing of the articles of termination or upon a later effective date, if specified in the articles of termination.

History: En. Sec. 51, Ch. 120, L. 1993; amd. Sec. 41, Ch. 302, L. 1999.

Compiler's Comments

1999 Amendment: Chapter 302 deleted former introductory clause that read: "Upon the dissolution and the commencement of winding up of the limited liability company, articles of dissolution must be filed in the office of the secretary of state and must set forth"; inserted (1) concerning termination of existence; deleted former (2) that read: "(2) the date of filing of its articles of organization and all amendments to the articles"; in (1)(b) and (1)(c) substituted "termination" for "dissolution"; deleted former (5) that read: "(5) any other information that the members or managers filing the articles determine necessary"; in (1)(d) after "dissolution" inserted "or termination"; inserted (1)(f) concerning date; inserted (1)(g) concerning termination of legal existence; inserted (2) concerning filing of articles of termination; and made minor changes in style. Amendment effective April 12, 1999.

35-8-907. Repealed. Sec. 56, Ch. 302, L. 1999.

History: En. Sec. 52, Ch. 120, L. 1993.

35-8-908. Known claims against dissolved or terminated limited liability companies. (1) A dissolved or terminated limited liability company may dispose of the known claims against it by following the procedure described in this section.

(2) The dissolved or terminated limited liability company shall notify its known claimants in writing of the dissolution or termination at any time after the effective date of the dissolution or termination. The written notice must:

(a) describe information that must be included in a claim;

(b) provide a mailing address where a claim may be sent;

(c) state the deadline, which may not be less than 120 days from the later of the effective date of the written notice or the filing of the articles of termination pursuant to 35-8-906, by which the dissolved or terminated limited liability company must receive the claim; and

(d) state that the claim will be barred if not received by the deadline.

(3) A claim against the dissolved or terminated limited liability company is barred:

(a) if a claimant who was given written notice under subsection (2) does not deliver the claim to the dissolved or terminated limited liability company by the deadline; or

(b) if a claimant whose claim was rejected by the dissolved or terminated limited liability company does not commence a proceeding to enforce the claim within 90 days from the effective date of the rejection notice.

(4) For purposes of this section, "claim" does not include a contingent liability or a claim based on an event occurring after the effective date of the dissolution or termination.

History: En. Sec. 53, Ch. 120, L. 1993; amd. Sec. 42, Ch. 302, L. 1999.

Compiler's Comments

1999 Amendment: Chapter 302 throughout section inserted references to termination; near middle of (1) after "by" deleted "filing articles of dissolution pursuant to 35-8-906 and"; and made minor changes in style. Amendment effective April 12, 1999.

35-8-909. Unknown claims against dissolved or terminated limited liability companies. (1) Subject to 35-8-908 and subsections (2) through (5) of this section, the dissolution or termination of a limited liability company, including dissolution by the expiration of its term, does not take away or impair any remedy available to or against the limited liability company or its members or managers for any claim or right, whether or not the claim or right existed or accrued prior to dissolution or termination. A proceeding by or against the limited liability company may be prosecuted or defended by the limited liability company in its name. The members and managers have power to take action as appropriate to protect the remedy, right, or claim.

(2) A dissolved or terminated limited liability company may publish notice of its dissolution or termination and request that persons having claims against it present the claims in accordance with the notice.

(3) The notice must:

(a) be published at least once in a newspaper of general circulation in the county in which the dissolved or terminated limited liability company's principal office is located or, if there is none in this state, then in the county in which its designated office is or was last located;

(b) describe the information required to be contained in a claim and provide a mailing address to which the claim is to be sent; and

(c) state that a claim against the limited liability company is barred unless a proceeding to enforce the claim is commenced within 5 years after publication of the notice.

(4) If a dissolved or terminated limited liability company publishes a notice in accordance with subsection (3), the claim of each of the following claimants is barred unless the claimant commences a proceeding to enforce the claim against the dissolved or terminated company within 5 years after the publication date of the notice:

(a) a claimant who did not receive written notice under 35-8-908;

(b) a claimant whose claim was timely sent to the dissolved or terminated company but not acted on; and

(c) a claimant whose claim is contingent on or based on an event occurring after the effective date of dissolution or termination.

(5) A claim not barred under this section may be enforced:

(a) against the dissolved or terminated limited liability company, to the extent of its undistributed assets; or

(b) if the assets have been distributed in liquidation, against a member of the dissolved or terminated company to the extent of the member's proportionate share of the claim or the company's assets distributed to the member in liquidation, whichever is less, but a member's total liability for all claims under this section may not exceed the total amount of assets distributed to the member.

History: En. Sec. 54, Ch. 120, L. 1993; amd. Sec. 43, Ch. 302, L. 1999.

Compiler's Comments

1999 Amendment: Chapter 302 in (1) in two places after "dissolution" inserted "or termination" and near beginning after "35-8-908" inserted "and subsections (2) through (5) of this section"; substituted (2) concerning notice of dissolution for former text that read: "(2) A claim may be enforced under 35-8-908 or this section:

(a) against the dissolved limited liability company, to the extent of the undistributed assets; or

(b) if the assets have been distributed in liquidation, against a member of the dissolved limited liability company, to the extent of the member's pro rata share of the claim or the corporate assets distributed to the member in liquidation, whichever is less, but a member's total liability for all claims under this section may not exceed the total amount of assets distributed to the member"; substituted (3) concerning content of published notice for former text that read: "(3) Subsections (1) and (2) apply to foreign limited liability companies and their members transacting business in this state for any claims otherwise arising or accruing under Montana law"; inserted (4) concerning 5-year limit on actions; inserted (5) concerning enforcement of claims; and made minor changes in style. Amendment effective April 12, 1999.

35-8-910 reserved.

35-8-911. Involuntary dissolution — procedure. (1) A limited liability company that is guilty of any of the actions or omissions described in 35-8-209(1) is in default. By reason of the default, the limited liability company may be involuntarily dissolved by order of the secretary of state, thereby forfeiting its right to transact any business in this state.

(2) On or before September 1 of each year, the secretary of state shall compile a list of defaulting limited liability companies, together with the amount of any filing fee, penalty, or costs remaining unpaid.

(3) The secretary of state shall give notice to the defaulting limited liability companies by:

(a) mailing a letter addressed to the limited liability company in care of its registered agent or any director or officer; or

(b) publication of a general notice to all Montana limited liability companies once a month for 3 consecutive months in a newspaper of general circulation in Lewis and Clark County.

(4) The notice referred to in subsection (3) must specify the fact of the proposed dissolution and state that unless the grounds for dissolution described in 35-8-209 have been rectified within 90 days following the mailing or publication of notice:

(a) the secretary of state will dissolve the defaulting limited liability companies;

(b) defaulting limited liability companies will forfeit the amount of any tax, penalty, or costs to the state of Montana; and

(c) defaulting limited liability companies will forfeit their rights to carry on business within the state.

(5) After 90 days following mailing or publication of each notice, the secretary of state may, by order, dissolve all limited liability companies that have not satisfied the requirements of applicable law and compile a full and complete list containing the names of all limited liability companies that have been so dissolved. The secretary of state shall immediately give notice to the dissolved limited liability companies as specified in subsection (3).

(6) In the case of involuntary dissolution, all the property and assets of the dissolved limited liability companies must be held in trust by the members or managers of the limited liability companies and the limited liability companies may carry on business only as necessary to wind up and liquidate their business and affairs under 35-8-901 and to notify claimants under 35-8-908 and 35-8-909.

(7) The administrative dissolution of a limited liability company does not terminate the authority of its registered agent for service of process.

History: En. Sec. 44, Ch. 302, L. 1999.

Compiler's Comments

Effective Date: Section 60, Ch. 302, L. 1999, provided: "[This act] is effective on passage and approval." Approved April 12, 1999.

35-8-912. Reinstatement following administrative dissolution. (1) A limited liability company administratively dissolved may apply to the secretary of state for reinstatement within 5 years after the effective date of dissolution. The applicant shall file an official application and one copy of the application. The application must:

(a) recite the name of the company and the effective date of its administrative dissolution;

(b) state that the ground for dissolution either did not exist or has been eliminated;

(c) state that the company's name satisfies the requirements of 35-8-103; and

(d) contain a certificate from the department of revenue reciting that all taxes owed by the company have been paid.

(2) If the secretary of state determines that the application contains the information required by subsection (1) and that the information is correct, the secretary of state shall cancel the certificate of dissolution, prepare a certificate of reinstatement that recites this determination and the effective date of reinstatement, file the original of the certificate, and serve the company with a copy of the certificate.

(3) When reinstatement is effective, it relates back to and takes effect as of the effective date of the administrative dissolution, and the company may resume its business as if the administrative dissolution had not occurred.

History: En. Sec. 45, Ch. 302, L. 1999.

Compiler's Comments

Effective Date: Section 60, Ch. 302, L. 1999, provided: "[This act] is effective on passage and approval." Approved April 12, 1999.

35-8-913. Appeal from denial of reinstatement. (1) If the secretary of state denies a limited liability company's application for reinstatement following administrative dissolution, the secretary of state shall serve the company with a record that explains the reason or reasons for the denial.

(2) The company may appeal the denial of reinstatement to a district court within 30 days after service of the notice of denial. The company shall appeal by petitioning the court to set aside the dissolution and attaching to the petition copies of the secretary of state's certificate of dissolution, the company's application for reinstatement, and the secretary of state's notice of denial.

(3) The court may summarily order the secretary of state to reinstate the dissolved company or may take other action that the court considers appropriate.

(4) The court's final decision may be appealed as in other civil proceedings.

History: En. Sec. 46, Ch. 302, L. 1999.

Compiler's Comments

Effective Date: Section 60, Ch. 302, L. 1999, provided: "[This act] is effective on passage and approval." Approved April 12, 1999.

Part 10
Foreign Limited Liability Companies

Part Cross-References

Foreign business corporations, Title 35, ch. 1, part 10.

Foreign nonprofit corporations, Title 35, ch. 2, part 8.

Limited liability partnerships — registration — applicability to foreign or interstate commerce, 35-10-710.

Foreign limited partnerships, Title 35, ch. 12, part 13.

35-8-1001. Authority to transact business required. (1) A foreign limited liability company may not transact business in this state until it obtains a certificate of authority from the secretary of state.

(2) The following activities, among others, do not constitute transacting business within the meaning of subsection (1):

(a) maintaining, defending, or settling any proceeding;

(b) holding meetings of the members or managers or carrying on other activities concerning internal affairs of the limited liability company;

(c) maintaining bank accounts;

(d) maintaining offices or agencies for the transfer, exchange, and registration of the limited liability company's own securities or maintaining trustees or depositaries with respect to those securities;

(e) selling through independent contractors;

(f) soliciting or obtaining orders, whether by mail or through employees or agents or otherwise, if the orders require acceptance outside this state before they become contracts;

(g) creating or acquiring indebtedness, mortgages, and security interests in real or personal property;

(h) securing or collecting debts or enforcing mortgages and security interests in property securing the debts;

(i) owning real or personal property that is acquired incident to activities described in subsection (2)(h) if the property is disposed of within 5 years after the date of acquisition, does not produce income, or is not used in the performance of a function of the limited liability company;

(j) conducting an isolated transaction that is completed within 30 days and that is not a transaction in the course of repeated transactions of a similar nature; or

(k) transacting business in interstate commerce.

(3) The list of activities in subsection (2) is not exhaustive.

(4) Except as provided in subsection (2), a foreign limited liability company is transacting business within the meaning of subsection (1) if it enters into a contract, including a contract entered into pursuant to Title 18, with the state of Montana, an agency of the state, or a political subdivision of the state and must apply for and receive a certificate of authority to transact business before entering into the contract. The secretary of state shall provide written notice to the contracting parties regarding the requirement that a foreign limited liability company obtain a certificate of authority. The foreign limited liability company must be allowed 30 days from the date of the notice to obtain the certificate of authority, and an existing contract may not be voided prior to the

expiration of the 30 days. This subsection does not apply to goods or services prepared out of state for delivery or use in this state.

History: **En. Sec. 55, Ch. 120, L. 1993; amd. Sec. 3, Ch. 363, L. 1999.**

Compiler's Comments

1999 Amendment: Chapter 363 inserted (4) providing that, except for goods or services prepared out of state for delivery or use in this state, a foreign limited liability company transacts business when it enters into a contract with the state or one of its political subdivisions and needs a certificate of authority to transact business, requiring the secretary of state to so notify the contracting parties, giving the foreign limited liability company 30 days from the date of the notice to obtain a certificate, and prohibiting the voiding of an existing contract prior to the expiration of the 30 days. Amendment effective April 20, 1999.

Retroactive Applicability: Section 7, Ch. 363, L. 1999, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to contracts entered into on or subsequent to January 1, 1999."

35-8-1002. Consequences of transacting business without authority. (1) A foreign limited liability company transacting business in this state without a certificate of authority may not maintain a proceeding in any court in this state until it obtains a certificate of authority.

(2) The successor to a foreign limited liability company that transacted business in this state without a certificate of authority and the assignee of a cause of action arising out of that business may not maintain a proceeding based on that cause of action in any court in this state until the foreign limited liability company or its successor obtains a certificate of authority.

(3) A court may stay a proceeding commenced by a foreign limited liability company or its successor or assignee until it determines whether the foreign corporation or its successor or assignee requires a certificate of authority. If it determines that a certificate is required, the court may further stay the proceeding until the foreign limited liability company or its successor obtains the certificate.

(4) A foreign limited liability company is liable for a civil penalty of $5 for each day, but not to exceed a total of $1,000 for each year, that it transacts business in this state without a certificate of authority. The attorney general may collect all penalties due under this subsection and deposit them to the general fund.

(5) Notwithstanding the provisions of subsections (1) and (2) and except as provided in subsection (6), the failure of a foreign limited liability company to obtain a certificate of authority does not impair the validity of its acts or prevent it from defending any proceeding in this state.

(6) A contract between the state of Montana, an agency of the state, or a political subdivision of the state and a foreign limited liability company that has failed to obtain a certificate of authority, as required under 35-8-1001, is voidable by the state, the contracting state agency, or the contracting political subdivision.

History: **En. Sec. 56, Ch. 120, L. 1993; amd. Sec. 4, Ch. 363, L. 1999.**

Compiler's Comments

1999 Amendment: Chapter 363 in (5) inserted exception clause; inserted (6) providing that a contract between a foreign limited liability company and the state or a political subdivision of the state is voidable by the state or political subdivision if the foreign limited liability company failed to obtain a certificate of authority as required under 35-8-1001. Amendment effective April 20, 1999.

Retroactive Applicability: Section 7, Ch. 363, L. 1999, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to contracts entered into on or subsequent to January 1, 1999."

35-8-1003. Application for certificate of authority. (1) A foreign limited liability company may apply for a certificate of authority to transact business in this state by delivering an application to the secretary of state for filing. The application must set forth:

(a) the name of the foreign limited liability company or, if its name is unavailable for use in this state, a name that satisfies the requirements of 35-8-1009;

(b) the name of the state or country under whose law it is organized;

(c) its date of organization and period of duration;

(d) the street address of its principal office;

(e) the address of its registered office in this state and the name of its registered agent at that office; and

(f) the names and usual business addresses of its current managers, if different from its members.

(2) A foreign limited liability company shall deliver with the completed application a certificate of existence or a similar document authenticated by the secretary of state or other official having custody of corporate records in the state or country under whose law the foreign limited liability company is organized.

History: En. Sec. 57, Ch. 120, L. 1993.

35-8-1004. Registered office and registered agent of foreign limited liability company. Each foreign limited liability company authorized to transact business in this state shall continuously maintain in this state:

(1) a registered office that may be the same as any of its places of business; and

(2) a registered agent who may be:

(a) an individual who resides in this state and whose business office is identical with the registered office; or

(b) a domestic corporation, a limited liability company, or a foreign corporation or foreign limited liability company authorized to transact business in this state.

History: En. Sec. 58, Ch. 120, L. 1993.

35-8-1005. Resignation of registered agent of foreign limited liability company. (1) The registered agent of a foreign limited liability company may resign the agency appointment by signing and delivering to the secretary of state for filing the original and two copies of a statement of resignation. The statement of resignation may include a statement that the registered office is also discontinued.

(2) After filing the statement, the secretary of state shall attach the filing receipt to one copy and mail the copy and receipt to the registered office if the office has not been discontinued. The secretary of state shall mail the other copy to the foreign limited liability company at its principal office address shown in its most recent annual report.

(3) The agency appointment is terminated and the registered office discontinued, if provided in the statement, 30 days after the date on which the statement was filed.

History: En. Sec. 59, Ch. 120, L. 1993.

35-8-1006. Change of registered office or registered agent of foreign limited liability company. (1) A foreign limited liability company authorized to transact business in this state may change its registered office or registered agent, or both, by delivering to the secretary of state, for filing, a statement of change setting forth:

(a) the foreign limited liability company's name;

(b) the street address of its current registered office;

(c) if the address of its registered office is to be changed, the new address of the registered office;

(d) the name and address of its current registered agent;

(e) if its registered agent or the agent's address is to be changed, the name and address of the successor registered agent or the current registered agent's new address; and

(f) the fact that after the change or changes are made, the street addresses of its registered office and the business office of its registered agent are identical.

(2) If a registered agent changes the street address of the registered agent's business office, the registered agent may change the street address of the registered office of any foreign limited liability company for which the registered agent is the registered agent by notifying the foreign limited liability company in writing of the change and signing, either manually or in facsimile, and delivering to the secretary of state, for filing, a statement of change that complies with the requirements of subsection (1) and that states that the foreign limited liability company has been notified of the change.

History: En. Sec. 60, Ch. 120, L. 1993.

35-8-1007. Amended certificate of authority. (1) A foreign limited liability company authorized to transact business in this state shall obtain an amended certificate of authority from the secretary of state if it changes:

(a) its name;

(b) the period of its duration; or

(c) the state or country of its organization.

(2) The requirements of 35-8-1003 for obtaining an original certificate of authority apply to obtaining an amended certificate under this section.

History: En. Sec. 61, Ch. 120, L. 1993.

35-8-1008. Effect of certificate of authority. (1) A certificate of authority issued by the secretary of state authorizes a foreign limited liability company to transact business in this state subject to the right of the state to revoke the certificate as provided in this part.

(2) A foreign limited liability company with a valid certificate of authority has the same rights and privileges as a domestic company of similar character and, except as otherwise provided by this part, is subject to the same duties, restrictions, penalties, and liabilities imposed on a domestic limited liability company of similar character.

(3) This part does not authorize the state to regulate the organization or internal affairs of a foreign limited liability company authorized to transact business in the state.

History: En. Sec. 62, Ch. 120, L. 1993.

35-8-1009. Name. A certificate of authority may not be issued to a foreign limited liability company unless the name of the company satisfies the requirements of 35-8-103. If the name of a foreign limited liability company does not satisfy the requirements of 35-8-103, to obtain or maintain a certificate of authority:

(1) the foreign limited liability company may add the words "limited company", the abbreviation "l.l.c.", or the abbreviation "l.c." to its name for use in this state; or

(2) if its real name is unavailable, the foreign limited liability company may use an assumed business name that is available and that satisfies the requirements of 35-8-208 if it files the assumed business name with the secretary of state.

History: En. Sec. 63, Ch. 120, L. 1993.

35-8-1010. Withdrawal of foreign limited liability company. (1) A foreign limited liability company authorized to transact business in this state may not withdraw from this state until it obtains a certificate of withdrawal from the secretary of state.

(2) A foreign limited liability company authorized to transact business in this state may apply for a certificate of withdrawal by delivering an application to the secretary of state for filing. The application must set forth:

(a) the name of the foreign limited liability company and the name of the state or country under whose law it is organized;

(b) that it is not transacting business in this state and that it surrenders its authority to transact business in this state;

(c) that it revokes the authority of its registered agent to accept service on its behalf and appoints the secretary of state as its agent for service of process in any proceeding based on a cause of action arising during the time it was authorized to transact business in this state;

(d) a mailing address to which the secretary of state may mail a copy of any process served on the secretary of state under subsection (3);

(e) a commitment to notify the secretary of state in the future of any change in its mailing address;

(f) that all taxes imposed on the foreign limited liability company by Title 15 have been paid, supported by a certificate by the department of revenue to be attached to the application to the effect that the department is satisfied from the available evidence that all taxes imposed have been paid. The issuance of the certificate does not relieve the corporation from liability for any taxes, penalties, or interest due the state of Montana.

(g) additional information as may be necessary or appropriate to enable the secretary of state to determine and assess any unpaid fees or taxes payable by the foreign limited liability company.

(3) After the withdrawal of the foreign limited liability company is effective, service of process on the secretary of state under this section is service on the foreign limited liability company. Upon receipt of process, the secretary of state shall mail a copy of the process to the foreign limited liability company at the mailing address set forth under subsection (2).

History: En. Sec. 64, Ch. 120, L. 1993.

35-8-1011. Grounds for revocation. The secretary of state may commence a proceeding under 35-8-1012 to revoke the certificate of authority of a foreign limited liability company authorized to transact business in this state if:

(1) the foreign limited liability company does not deliver its annual report to the secretary of state within 140 days after it is due;

(2) the foreign limited liability company is without a registered agent or registered office in this state for 60 days or more;

(3) the foreign limited liability company does not inform the secretary of state under 35-8-105 that its registered agent or registered office has changed, that its registered agent has resigned, or that its registered office has been discontinued within 60 days of the change, resignation, or discontinuance; or

(4) the secretary of state receives a duly authenticated certificate from the secretary of state or other official having custody of company records in the state or country under whose law the foreign limited liability company is organized, stating that it has been dissolved or disappeared as the result of a merger.

History: En. Sec. 65, Ch. 120, L. 1993.

35-8-1012. Procedure for and effect of revocation. (1) If the secretary of state determines that one or more grounds exist under 35-8-1011 for revocation of a certificate of authority, the secretary of state shall serve the foreign limited liability company with written notice of the secretary of state's determination.

(2) If the foreign limited liability company does not correct each ground for revocation or demonstrate to the reasonable satisfaction of the secretary of state that each ground determined by the secretary of state does not exist within 60 days after service of the notice is mailed, the secretary of state may revoke the foreign limited liability company's certificate of authority by signing a certificate of revocation that states the ground or grounds for revocation and the effective date of the revocation. The secretary of state shall file the original of the certificate and mail a copy to the foreign limited liability company.

(3) The authority of a foreign limited liability company to transact business in this state ceases on the date shown on the certificate revoking its certificate of authority.

(4) The secretary of state's revocation of a foreign limited liability company's certificate of authority appoints the secretary of state as the foreign limited liability company's agent for service of process in any proceeding based on a cause of action that arose during the time the foreign limited liability company was authorized to transact business in this state. Service of process on the secretary of state under this subsection is service on the foreign limited liability company. Upon receipt of process, the secretary of state shall mail a copy of the process to the secretary of the foreign limited liability company at its principal office shown in its most recent annual report or in any subsequent communication received from the foreign limited liability company, stating the current mailing address of its principal office or, if no report or communication is on file, in its application for a certificate of authority.

(5) Revocation of a foreign limited liability company's certificate of authority does not terminate the authority of the registered agent of the foreign limited liability company.

History: En. Sec. 66, Ch. 120, L. 1993.

35-8-1013. Appeal from revocation. (1) A foreign limited liability company may appeal the secretary of state's revocation of its certificate of authority to the district court within 30 days after service of the certificate of revocation is mailed. The foreign limited liability company may appeal by petitioning the court to set aside the revocation and by attaching to the petition copies of its certificate of authority and the secretary of state's certificate of revocation.

(2) The court may summarily order the secretary of state to reinstate the certificate of authority or may take any other action the court considers appropriate.

(3) The court's final decision may be appealed as in other civil proceedings.

History: En. Sec. 67, Ch. 120, L. 1993.

35-8-1014. Admission of foreign professional limited liability companies — application — revocation. (1) A foreign professional limited liability company is entitled to a certificate of authority to transact business in this state only if:

(a) the name of the foreign professional limited liability company meets the requirements of 35-8-1302;

(b) the foreign professional limited liability company is organized only for purposes for which a professional limited liability company may be organized under part 13 of this chapter; and

(c) all the members and not less than one-half of the managers of the foreign professional limited liability company are qualified persons with respect to the foreign professional limited liability company.

(2) Notwithstanding 35-8-1001, a foreign professional limited liability company may not be required to obtain a certificate of authority to transact business in this state unless it maintains an office in this state for the conduct of business or professional practice.

(3) The application for a certificate of authority must include a statement that all the members and not less than one-half of the managers are licensed in at least one state or territory or the District of Columbia to render a professional service described in the statement of purposes of the foreign professional limited liability company.

(4) The certificate of authority may be revoked by the secretary of state if the foreign professional limited liability company fails to comply with any provision of part 13 of this chapter. The licensing authority shall certify to the secretary of state, from time to time, the names of all foreign professional limited liability companies that have given cause for revocation, together with the pertinent facts, and shall concurrently mail to each foreign professional limited liability company at its registered office in this state a notice that the certification has been made. A certificate of authority of a foreign professional limited liability company may not be revoked unless there have been both 60 days' notice of intent to revoke and a failure to correct the noncompliance during the 60 days.

(5) A foreign professional limited liability company is subject to all other provisions of part 13 of this chapter not inconsistent with this section.

History: En. Sec. 68, Ch. 120, L. 1993.

Part 11

Suits by and Against the Limited Liability Company

Part Cross-References

Business corporations — general powers, 35-1-115.

Foreign corporations — authority to transact business required, 35-1-1026.

Action by and against partnership and partners, 35-10-312.

Derivative actions — limited partners, Title 35, ch. 12, part 14.

35-8-1101. Suits by and against limited liability company. Suit may be brought by or against a limited liability company in its own name.

History: En. Sec. 69, Ch. 120, L. 1993.

35-8-1102. Repealed. Sec. 56, Ch. 302, L. 1999.

History: En. Sec. 70, Ch. 120, L. 1993.

35-8-1103. Service of process. (1) An agent for service of process appointed by a limited liability company or a foreign limited liability company is an agent of the company for service of any process, notice, or demand required or permitted by law to be served upon the company.

(2) If a limited liability company or foreign limited liability company fails to appoint or maintain an agent for service of process in this state or the agent for service of process cannot with reasonable diligence be found at the agent's address, the secretary of state is an agent of the company upon whom process, notice, or demand may be served.

(3) Service of any process, notice, or demand on the secretary of state may be made by delivering to and leaving with the secretary of state duplicate copies of the process, notice, or demand and, when applicable, pursuant to the provisions of Rule 4D(6) of the Montana Rules of Civil Procedure. If the process, notice, or demand is not served pursuant to the provisions of Rule 4D(6), the secretary of state shall forward one of the copies by registered mail, return receipt requested, to the company at its designated office, and the secretary of state may require the person requesting the service to reimburse the secretary of state for mailing costs. Service is effected under this subsection at the earliest of:

(a) the date on which the company receives the process, notice, or demand;

(b) the date shown on the return receipt, if signed on behalf of the company; or

(c) 5 days after its deposit in the mail, if mailed postpaid and correctly addressed.

(4) The secretary of state shall keep a record of all processes, notices, and demands served pursuant to this section and record the time of and the action taken regarding the service.

(5) This section does not affect the right to serve process, notice, or demand in any manner otherwise provided by law.

History: En. Sec. 47, Ch. 302, L. 1999.

Compiler's Comments

Effective Date: Section 60, Ch. 302, L. 1999, provided: "[This act] is effective on passage and approval." Approved April 12, 1999.

35-8-1104. Derivative actions — proper plaintiff — pleading — expenses. (1) A member of a limited liability company may maintain an action in the right of the company if the members or managers having authority to bring the action have refused to commence the action or an effort to cause those members or managers to commence the action is not likely to succeed.

(2) In a derivative action for a limited liability company, the plaintiff must be a member of the company when the action is commenced and:

(a) must have been a member at the time of the transaction of which the plaintiff complains; or

(b) the plaintiff's status as a member must have devolved upon the plaintiff by operation of law or pursuant to the terms of the operating agreement from a person who was a member at the time of the transaction.

(3) In a derivative action for a limited liability company, the complaint must set forth with particularity the effort of the plaintiff to secure initiation of the action by a member or manager or the reasons for not making the effort.

(4) If a derivative action for a limited liability company is successful, in whole or in part, or if anything is received by the plaintiff as a result of a judgment, compromise, or settlement of an action or claim, the court may award the plaintiff reasonable expenses, including reasonable attorney fees, and shall direct the plaintiff to remit to the limited liability company the remainder of the proceeds received.

History: En. Sec. 48, Ch. 302, L. 1999.

Compiler's Comments

Effective Date: Section 60, Ch. 302, L. 1999, provided: "[This act] is effective on passage and approval." Approved April 12, 1999.

Part 12

Merger

35-8-1201. Merger. (1) Pursuant to a plan of merger approved under subsection (3), a domestic limited liability company may merge with or into one or more limited liability companies, foreign limited liability companies, partnerships, foreign partnerships, limited partnerships, foreign limited partnerships, or other domestic or foreign entities. In the case of a merger with a foreign business entity, the merger must be permitted by the laws of the jurisdiction in which the foreign entity is incorporated or organized.

(2) A plan of merger must set forth:

(a) the name of each entity that is a party to the merger;

(b) the name of the surviving entity into which the other entities will merge;

(c) the type of organization of the surviving entity;

(d) the terms and conditions of the merger;

(e) the manner and basis for converting the interests of each party to the merger into interests or obligations of the surviving entity or into money or other property, in whole or in part; and

(f) the street address of the surviving entity's principal place of business.

(3) A plan of merger must be approved:

(a) in the case of a limited liability company that is a party to the merger, by all of the members or by a number or percentage of members specified in the operating agreement;

(b) in the case of a foreign limited liability company that is a party to the merger, by the vote required for approval of a merger by the law of the state or foreign jurisdiction in which the foreign limited liability company is organized;

(c) in the case of a domestic partnership or domestic limited partnership that is a party to the merger, by the vote required for approval of a conversion under 35-8-1210(2); and

(d) in the case of any other entities that are parties to the merger, by the vote required for approval of a merger by the law of this state or of the state or foreign jurisdiction in which the entity is organized and, in the absence of any requirement, by all the owners of interests in the entity.

(4) After a plan of merger is approved and before the merger takes effect, the plan may be amended or abandoned as provided in the plan.

(5) The merger is effective upon the filing of the articles of merger with the secretary of state or at a later date as the articles may provide.

History: En. Sec. 71, Ch. 120, L. 1993; amd. Sec. 49, Ch. 302, L. 1999.

Compiler's Comments

1999 Amendment: Chapter 302 substituted current text concerning plan of merger for former text that read: "(1) Pursuant to any agreement, a domestic limited liability company may merge with or into one or more limited liability companies formed under the laws of this state or any other state. The surviving limited liability company is as provided in the merger agreement.

(2) A domestic limited liability company that is not the surviving limited liability company in the merger shall file articles of dissolution that must have an effective date not later than the effective date of the merger.

(3) If, following a merger of one or more domestic limited liability companies or one or more limited liability companies formed under the laws of any other state, the surviving limited liability company is not a domestic limited liability company, there must be attached to the articles of dissolution for each domestic limited liability company articles of merger executed by the surviving limited liability company:

(a) stating that the surviving limited liability company may be served with process in the state of Montana in any action, suit, or proceeding for the enforcement of any obligation of the domestic limited liability company;

(b) irrevocably appointing the secretary of state as the surviving limited liability company's agent to accept service of process in any action, suit, or proceeding; and

(c) specifying the address to which a copy of process must be mailed to the surviving limited liability company by the secretary of state.

(4) When the articles of dissolution required by subsection (2) have become effective, the following must be vested in and enforced against the surviving limited liability company as they were in each of the limited liability companies that merged:

(a) all of the rights, privileges, and powers of each of the limited liability companies that merged;

(b) all property, real, personal, and mixed;

(c) all debts due to any of the limited liability companies; and

(d) all other things and causes of action belonging to each of the limited liability companies." Amendment effective April 12, 1999.

35-8-1202. Articles of merger. (1) After approval of the plan of merger under 35-8-1201(3), unless the merger is abandoned under 35-8-1201(4), articles of merger must be signed on behalf of each limited liability company and other entity that is a party to the merger and delivered to the secretary of state for filing. The articles must set forth:

(a) the name and jurisdiction of formation or organization of each of the limited liability companies and other entities that are parties to the merger;

(b) for each limited liability company that is to merge, the date on which its articles of organization were filed with the secretary of state;

(c) that a plan of merger has been approved and signed by each limited liability company and other entity that is to merge;

(d) the name and address of the surviving limited liability company or other surviving entity;

(e) the effective date of the merger;

(f) if a limited liability company is the surviving entity, the changes in its articles of organization that are necessary by reason of the merger;

(g) if a party to a merger is a foreign limited liability company, the jurisdiction and date of filing of its initial articles of organization and the date when its application for authority was filed by the secretary of state or, if an application has not been filed, a statement to that effect; and

(h) if the surviving entity is not a limited liability company, the agreement that the surviving entity may be served with process in this state and is subject to liability in any action or proceeding for the enforcement of any liability or obligation of any limited liability company previously subject to suit in this state that is to merge and for the enforcement, as provided in this chapter, of the right of members of any limited liability company to receive payment for their interest against the surviving entity; and

(i) the name and address of the registered agent of the surviving entity.

(2) If a foreign limited liability company is the surviving entity of a merger, it may not do business in this state until an application for that authority is filed with the secretary of state.

(3) The surviving limited liability company or other entity shall furnish a copy of the plan of merger, on request and without cost, to any member of any limited liability company or any person holding an interest in any other entity that is subject to the merger.

(4) Articles of merger operate as an amendment to a surviving limited liability company's articles of organization.

History: En. Sec. 50, Ch. 302, L. 1999.

Compiler's Comments

Effective Date: Section 60, Ch. 302, L. 1999, provided: "[This act] is effective on passage and approval." Approved April 12, 1999.

35-8-1203. Effect of merger. (1) When a merger takes effect:

(a) the separate existence of each limited liability company and other entity that are a party to the merger, other than the surviving entity, terminates;

(b) all property owned by each of the limited liability companies and other entities that are a party to the merger vests in the surviving entity;

(c) all debts, liabilities, and other obligations of each limited liability company and other entity that are a party to the merger become the obligations of the surviving entity;

(d) an action or proceeding pending by or against a limited liability company or other entity that is a party to a merger may be continued as if the merger had not occurred or the surviving entity may be substituted as a party to the action or proceeding; and

(e) except as prohibited by other law, all the rights, privileges, immunities, powers, and purposes of every limited liability company and other entity that are a party to a merger vest in the surviving entity.

(2) The secretary of state is an agent for service of process in an action or proceeding against a surviving foreign entity to enforce an obligation of any party to the merger if the surviving foreign entity fails to appoint or maintain an agent designated for service of process in this state or if the agent for service of process cannot with reasonable diligence be found at the designated office. Upon receipt of process, the secretary of state shall send a copy of the process by registered mail, return receipt requested, to the surviving entity at the address set forth in the articles of merger. Service is effected under this subsection at the earliest of:

(a) the date on which the company receives the process, notice, or demand;

(b) the date shown on the return receipt, if signed on behalf of the company; or

(c) 5 days after its deposit in the mail, if mailed postpaid and correctly addressed.

(3) A member of the surviving limited liability company is liable for all obligations of a party to the merger for which the member was personally liable before the merger.

(4) Unless otherwise agreed, a merger of a limited liability company that is not the surviving entity in the merger does not require the limited liability company to wind up its business under this chapter or to pay its liabilities and distribute its assets pursuant to this chapter.

(5) Articles of merger serve as articles of dissolution for a limited liability company that is not the surviving entity in the merger.

History: En. Sec. 51, Ch. 302, L. 1999.

Compiler's Comments

Effective Date: Section 60, Ch. 302, L. 1999, provided: "[This act] is effective on passage and approval." Approved April 12, 1999.

35-8-1204 reserved.

35-8-1205. Definitions. As used in this part, the following definitions apply:

(1) "Corporation" means a corporation formed under the laws of this state or comparable law of another jurisdiction.

(2) "General partner" means a partner in a partnership and a general partner in a limited partnership.

(3) "Limited partner" means a limited partner in a limited partnership.

(4) "Limited partnership" means a limited partnership formed under the laws of this state or comparable law of another jurisdiction.

(5) "Partner" means a general partner or a limited partner.

(6) "Partnership" means a general partnership formed under the laws of this state or comparable law of another jurisdiction.

(7) "Partnership agreement" means an agreement among the partners of a partnership or a limited partnership.

History: En. Sec. 52, Ch. 302, L. 1999.

Compiler's Comments

Effective Date: Section 60, Ch. 302, L. 1999, provided: "[This act] is effective on passage and approval." Approved April 12, 1999.

35-8-1206 through 35-8-1209 reserved.

35-8-1210. Conversion of partnership or limited partnership to limited liability company. (1) A partnership or limited partnership may be converted to a limited liability company pursuant to this section.

(2) The terms and conditions of a conversion of a partnership or limited partnership to a limited liability company must be approved by all of the partners or by a number or percentage of the partners required for conversion in the partnership agreement.

(3) An agreement of conversion must set forth the terms and conditions of the conversion of the interests of partners of a partnership or of a limited partnership, as the case may be, into interests in the converted limited liability company or cash or other consideration to be paid or delivered as a result of the conversion of the interests of the partners, or a combination of interests, cash, or other consideration.

(4) After a conversion is approved under subsection (2), the partnership or limited partnership shall file articles of organization and all filing fees in the office of the secretary of state that satisfy the requirements of 35-8-202 and that contain:

(a) a statement that the partnership or limited partnership was converted to a limited liability company from a partnership or limited partnership;

(b) its former name;

(c) a statement of the number of votes cast by the partners entitled to vote for and against the conversion and, if the vote is less than unanimous, the number or percentage required to approve the conversion under subsection (2); and

(d) in the case of a limited partnership, a statement that the certificate of limited partnership is to be canceled as of the date on which the conversion took effect.

(5) In the case of a limited partnership, the filing of articles of organization under subsection (4) cancels its certificate of limited partnership as of the date on which the conversion took effect.

(6) A conversion takes effect when the articles of organization are filed in the office of the secretary of state or at any later date specified in the articles of organization.

(7) A general partner who becomes a member of a limited liability company as a result of a conversion remains liable as a partner for any obligation incurred by the partnership or limited partnership before the conversion takes effect.

(8) A general partner's liability for all obligations of the limited liability company incurred after the conversion takes effect is that of a member of the company.

(9) A limited partner who becomes a member as a result of a conversion remains liable for obligations of the limited partnership only to the extent that the limited partner was liable for an obligation incurred by the limited partnership before the conversion takes effect.

History: En. Sec. 53, Ch. 302, L. 1999.

Compiler's Comments

Effective Date: Section 60, Ch. 302, L. 1999, provided: "[This act] is effective on passage and approval." Approved April 12, 1999.

35-8-1211. Effect of conversion — entity unchanged — part not exclusive. (1) A partnership or limited partnership that has been converted pursuant to this part is for all purposes the same entity that existed before the conversion.

(2) When a conversion takes effect:

(a) all property owned by the converting partnership or limited partnership vests in the limited liability company;

(b) all debts, liabilities, and other obligations of the converting partnership or limited partnership continue as obligations of the limited liability company;

(c) an action or proceeding pending by or against the converting partnership or limited partnership may be continued as if the conversion had not occurred;

(d) except as prohibited by other law, all of the rights, privileges, immunities, powers, and purposes of the converting partnership or limited partnership vest in the limited liability company; and

(e) except as otherwise provided in the agreement of conversion under 35-8-1210(3), all of the partners of the converting partnership continue as members of the limited liability company.

(3) The provisions of this part do not preclude an entity from being converted or merged under other provisions of law.

History: En. Sec. 54, Ch. 302, L. 1999.

Compiler's Comments

Effective Date: Section 60, Ch. 302, L. 1999, provided: "[This act] is effective on passage and approval." Approved April 12, 1999.

Part 13

Professional Limited Liability Company

Part Cross-References

Montana Professional Corporation Act, Title 35, ch. 4.

Limited liability partnerships, Title 35, ch. 10, part 7.

United partnerships, Title 35, ch. 12.

35-8-1301. Purposes of professional limited liability companies. Professional limited liability companies may be organized under this part only for the purpose of rendering professional services and services ancillary to professional services within a single profession, except that a professional limited liability company may be organized for the purpose of rendering professional services within two or more professions and for any purpose or purposes for which companies may be organized under this chapter to the extent that the combination of professional purposes or professional and business purposes is permitted by the licensing laws and rules of this state applicable to the professions.

History: En. Sec. 72, Ch. 120, L. 1993.

35-8-1302. Professional limited liability company name. The name of a domestic or foreign professional limited liability company:

(1) must contain the words "professional limited liability company", "professional limited company", "professional l.l.c.", "professional llc", "p.l.l.c.", or "pllc"; and

(2) must conform to rules promulgated by a licensing authority having jurisdiction of a professional service described in the articles of organization.

History: En. Sec. 73, Ch. 120, L. 1993; amd. Sec. 55, Ch. 302, L. 1999.

Compiler's Comments

1999 Amendment: Chapter 302 in (1) inserted "professional limited company", "professional llc", and "pllc"; and made minor changes in style. Amendment effective April 12, 1999.

35-8-1303. Professional limited liability company managers. At least one-half of the managers of a professional limited liability company must be qualified persons with respect to the limited liability company.

History: En. Sec. 74, Ch. 120, L. 1993.

35-8-1304. Membership in professional limited liability company. (1) Only the following persons may be members of a professional limited liability company:

(a) natural persons authorized by law of this or any other state, a territory of the United States, or the District of Columbia to render a professional service permitted by the articles of organization of the professional limited liability company;

(b) general partnerships in which all the partners are authorized by law of this or any other state, a territory of the United States, or the District of Columbia to render a professional service permitted by the articles of incorporation and in which at least one partner is authorized by law in this state to render a professional service permitted by the articles of organization of the professional limited liability company; and

(c) domestic or foreign professional corporations and domestic or foreign professional limited liability companies authorized by law in this state to render a professional service permitted by the articles of organization of the professional limited liability company.

(2) The licensing authority may by rule further restrict or condition the issuance of membership interests in order to preserve ethical standards, but a rule may not cause a member at the time the rule becomes effective to become a disqualified person.

History: En. Sec. 75, Ch. 120, L. 1993.

35-8-1305. Rendering services. A domestic or foreign professional limited liability company may render professional services in this state only through natural persons permitted to render the services in this state; however, nothing in this part requires any person employed by a professional limited liability company to be licensed to perform services for which a license is not otherwise required or prohibits the rendering of professional services by a licensed natural person acting in that person's individual capacity, even if the person is a member or manager of a professional limited liability company.

History: En. Sec. 76, Ch. 120, L. 1993.

35-8-1306. Responsibility for services. (1) An individual who renders professional services as a member or an employee of a domestic or foreign professional limited liability company is liable for any negligent or wrongful act or omission in which the individual personally participates to the same extent as if the individual had rendered the services as a sole practitioner. A member or an employee of a professional limited liability company is not liable for the conduct of other members or employees unless the member or employee is at fault in appointing, supervising, or cooperating with them.

(2) A domestic or foreign professional limited liability company whose member or employee performs professional services within the scope of the member's or employee's employment or apparent authority to act for the company is liable to the same extent as the member or employee.

(3) Except as otherwise provided by statute, the personal liability of a member of a domestic or foreign professional limited liability company is no greater in any respect than that of a member of a limited liability company otherwise organized under this part.

History: En. Sec. 77, Ch. 120, L. 1993; amd. Sec. 3, Ch. 268, L. 1997.

35-8-1307. Relationship to clients and patients. (1) The relationship between an individual performing professional services as an employee of a domestic or foreign professional limited liability company and a client or patient is the same as if the individual performed the services as a sole practitioner.

(2) The relationship between a domestic or foreign professional limited liability company performing professional services and the client or patient is the same as between the client or patient and the individual performing the services.

(3) Any privilege applicable to communications between a person rendering professional services and the person receiving the services recognized under the statutory or common law of this state extends to a domestic or foreign professional limited liability company and its employees.

History: En. Sec. 78, Ch. 120, L. 1993.

CHAPTER 9

MONTANA CLOSE CORPORATION ACT

Part 1 — General

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Part 1
General

35-9-101. Short title. This chapter shall be known and may be cited as the "Montana Close Corporation Act".

History: En. Sec. 1, Ch. 432, L. 1987.

35-9-102. Application of Montana Business Corporation Act and Montana Professional Corporation Act. (1) The Montana Business Corporation Act applies to statutory close corporations to the extent not inconsistent with the provisions of this chapter.

(2) This chapter applies to a professional corporation organized under the Montana Professional Corporation Act whose articles of incorporation contain the statement required by 35-9-103 except insofar as the Montana Professional Corporation Act contains inconsistent provisions.

(3) This chapter does not repeal or modify any statute or rule of law that applies to a corporation that is organized under the Montana Business Corporation Act or the Montana Professional Corporation Act and that does not elect to become a statutory close corporation under 35-9-103.

History: En. Sec. 2, Ch. 432, L. 1987.

Cross-References

Business corporations, Title 35, ch. 1.

Montana Professional Corporation Act, Title 35, ch. 4.

35-9-103. Definition and election of statutory close corporation status. (1) A statutory close corporation is a corporation whose articles of incorporation contain a statement that the corporation is a statutory close corporation.

(2) A corporation having 25 or fewer shareholders may become a statutory close corporation by amending its articles of incorporation to include the statement required by subsection (1). The amendment must be approved by the holders of at least two-thirds of the votes of each class or series of shares of the corporation, voting as separate voting groups, whether or not otherwise

entitled to vote on amendments. If the amendment is adopted, a shareholder who voted against the amendment is entitled to assert dissenters' rights under 35-1-826 through 35-1-839.

History: En. Sec. 3, Ch. 432, L. 1987; amd. Sec. 197, Ch. 368, L. 1991.

Part 2

Share Transfer Restrictions

35-9-201. Notice of statutory close corporation status on issued shares. (1) The following statement must appear conspicuously on each share certificate issued by a statutory close corporation:

The rights of shareholders in a statutory close corporation may differ materially from the rights of shareholders in other corporations. Copies of the articles of incorporation and bylaws, shareholders' agreements, and other documents, any of which may restrict transfers and affect voting and other rights, may be obtained by a shareholder on written request to the corporation.

(2) Within a reasonable time after the issuance or transfer of uncertificated shares, the corporation shall send to the shareholders a written notice containing the information required by subsection (1).

(3) The notice required by this section satisfies all requirements of this chapter and of 35-1-628 that notice of share transfer restrictions be given.

(4) A person claiming an interest in shares of a statutory close corporation that has complied with the notice requirement of this section is bound by the documents referred to in the notice. A person claiming an interest in shares of a statutory close corporation that has not complied with the notice requirement of this section is bound by any documents of which he or a person through whom he claims has knowledge or notice.

(5) A corporation shall provide to any shareholder upon his written request and without charge copies of provisions that restrict transfer or affect voting or other rights of shareholders appearing in articles of incorporation, bylaws, or shareholders' or voting trust agreements filed with the corporation.

History: En. Sec. 4, Ch. 432, L. 1987; amd. Sec. 198, Ch. 368, L. 1991.

Cross-References

Share transfer restrictions, 35-9-202.

Compulsory purchase of shares, 35-9-205 through 35-9-208.

Shareholder agreements, 35-9-301.

35-9-202. Share transfer prohibition. (1) An interest in shares of a statutory close corporation may not be voluntarily or involuntarily transferred, by operation of law or otherwise, except to the extent permitted by the articles of incorporation or under 35-9-203.

(2) Except to the extent the articles of incorporation provide otherwise, this section does not apply to a transfer:

(a) to the corporation or to any other holder of the same class or series of shares;

(b) to members of the shareholder's immediate family or to a trust, all of whose beneficiaries are members of the shareholder's immediate family, which immediate family consists of his spouse, parents, lineal descendants including adopted children and stepchildren and the spouse of any lineal descendant, and brothers and sisters;

(c) that has been approved in writing by all of the holders of the corporation's shares having general voting rights;

(d) to an executor or administrator upon the death of a shareholder or to a trustee or receiver as the result of a bankruptcy, insolvency, dissolution, or similar proceeding brought by or against a shareholder;

(e) by merger or share exchange under Title 35, chapter 1, part 8, or an exchange of existing shares for other shares of a different class or series in the corporation;

(f) by a pledge as collateral for a loan that does not grant the pledgee any voting rights possessed by the pledgor; and

(g) made after termination of the corporation's status as a statutory close corporation.

History: En. Sec. 5, Ch. 432, L. 1987.

Cross-References

Information on shares, 35-9-201.

Corporation's purchase options, 35-9-203, 35-9-204.

Merger, share exchange, and sale of assets, 35-9-401.

Termination of statutory close corporation status, 35-9-402.

35-9-203. Share transfer after first refusal by corporation. (1) A person desiring to transfer shares of a statutory close corporation subject to the transfer prohibition of 35-9-202 must first offer them to the corporation by obtaining an offer to purchase the shares for cash from a third person who is eligible to purchase the shares under subsection (2). The offer by the third person must be in writing and state the offeror's name and address, the number and class or series of shares offered, the offering price per share, and the other terms of the offer.

(2) A third person is eligible to purchase the shares if:

(a) he is eligible to become a qualified shareholder under any federal or state tax statute the corporation has adopted and he agrees in writing not to terminate his qualification without the approval of the remaining shareholders; and

(b) his purchase of the shares will not impose a personal holding company tax or similar federal or state penalty tax on the corporation.

(3) The person desiring to transfer shares shall deliver the offer to the corporation and by doing so offers to sell the shares to the corporation on the terms of the offer. Within 20 days after the corporation receives the offer, the corporation shall call a special shareholders' meeting, to be held not more than 40 days after the call, to decide whether the corporation should purchase all but not less than all of the offered shares. The offer must be approved by the affirmative vote of the holders of a majority of votes entitled to be cast at the meeting, excluding votes in respect of the shares covered by the offer.

(4) The corporation must deliver to the offering shareholder written notice of acceptance within 75 days after receiving the offer or the offer is rejected. If the corporation makes a counteroffer, the shareholder must deliver to the corporation written notice of acceptance within 15 days after receiving the counteroffer or the counteroffer is rejected. If the corporation accepts the original offer or the shareholder accepts the corporation's counteroffer, the shareholder shall deliver to the corporation duly endorsed certificates for the shares, or instruct the corporation in writing to transfer the shares if

uncertificated, within 20 days after the effective date of the notice of acceptance. The corporation may specifically enforce the shareholder's delivery or instruction obligation under this subsection.

(5) A corporation accepting an offer to purchase shares under this section may allocate some or all of the shares to one or more of its shareholders or to other persons if all the shareholders voting in favor of the purchase approve the allocation. However, if the corporation has more than one class or series of shares, the remaining holders of the class or series of shares being purchased are entitled to a first option to purchase the shares not purchased by the corporation in proportion to their shareholdings or in some other proportion agreed to by all the shareholders participating in the purchase.

(6) If an offer to purchase shares under this section is rejected, the offering shareholder, for a period of 120 days after the corporation received his offer, is entitled to transfer to the third-person offeror all but not less than all of the offered shares in accordance with the terms of his offer to the corporation.

History: En. Sec. 6, Ch. 432, L. 1987.

35-9-204. Attempted share transfer in breach of prohibition. (1) An attempt to transfer shares in a statutory close corporation in violation of a prohibition against transfer binding on the transferee is ineffective.

(2) An attempt to transfer shares in a statutory close corporation in violation of a prohibition against transfer that is not binding on the transferee, either because the notice required by 35-9-201 was not given or because the prohibition is held unenforceable by a court, gives the corporation an option to purchase the shares from the transferee for the same price and on the same terms that he purchased them. To exercise its option, the corporation must give the transferee written notice within 30 days after the shares are presented for registration in the transferee's name. The corporation may specifically enforce the transferee's sale obligation upon exercise of its purchase option.

History: En. Sec. 7, Ch. 432, L. 1987.

Cross-References

Share transfer restrictions, 35-9-202.

35-9-205. Compulsory purchase of shares after death of shareholder. (1) This section and 35-9-206 through 35-9-208 apply to a statutory close corporation only if so provided in its articles of incorporation. If these sections apply, the executor or administrator of the estate of a deceased shareholder may require the corporation to purchase or cause to be purchased all but not less than all of the decedent's shares or to be dissolved.

(2) The provisions of 35-9-206 through 35-9-208 may be modified only if the modification is set forth or referred to in the articles of incorporation.

(3) An amendment to the articles of incorporation to provide for application of 35-9-206 through 35-9-208 or to modify or delete the provisions of these sections must be approved by the holders of at least two-thirds of the votes of each class or series of shares of the statutory close corporation, voting as separate voting groups, whether or not otherwise entitled to vote on amendments. If the corporation has no shareholders when the amendment is proposed, it must be approved by at least two-thirds of the subscribers for shares, if any, or if none, by all of the incorporators.

(4) A shareholder who votes against an amendment to modify or delete the provisions of 35-9-206 through 35-9-208 is entitled to dissenters' rights under 35-1-826 through 35-1-839 if the amendment upon adoption terminates or substantially alters his existing rights under these sections to have his shares purchased.

(5) A shareholder may waive his and his estate's rights under 35-9-206 through 35-9-208 by a signed writing.

(6) Sections 35-9-206 through 35-9-208 do not prohibit any other agreement providing for the purchase of shares upon a shareholder's death, nor do they prevent a shareholder from enforcing any remedy he has independently of 35-9-206 through 35-9-208.

History: En. Sec. 8, Ch. 432, L. 1987; amd. Sec. 199, Ch. 368, L. 1991.

Cross-References

Court action to compel purchase, 35-9-206, 35-9-207.

35-9-206. Exercise of compulsory purchase right. (1) A person entitled and desiring to exercise the compulsory purchase right described in 35-9-205 shall deliver a written notice to the corporation, within 120 days after the death of the shareholder, describing the number and class or series of shares beneficially owned by the decedent and requesting that the corporation offer to purchase the shares.

(2) Within 20 days after the effective date of the notice, the corporation shall call a special shareholders' meeting, to be held not more than 40 days after the call, to decide whether the corporation should offer to purchase the shares. A purchase offer must be approved by the affirmative vote of the holders of a majority of votes entitled to be cast at the meeting, excluding votes in respect of the shares covered by the notice.

(3) The corporation shall deliver a purchase offer to the person requesting it within 75 days after the effective date of the request notice. A purchase offer must be accompanied by the corporation's balance sheet as of the end of a fiscal year ending not more than 16 months before the effective date of the request notice, an income statement for that year, a statement of changes in shareholders' equity for that year, and the latest available interim financial statements, if any. The person must accept the purchase offer in writing within 15 days after receiving it or the offer is rejected.

(4) A corporation agreeing to purchase shares under this section may allocate some or all of the shares to one or more of its shareholders or to other persons if all the shareholders voting in favor of the purchase offer approve the allocation. However, if the corporation has more than one class or series of shares, the remaining holders of the class or series of shares being purchased are entitled to a first option to purchase the shares not purchased by the corporation in proportion to their shareholdings or in some other proportion agreed to by all the shareholders participating in the purchase.

(5) If price and other terms of a compulsory purchase of shares are fixed or are to be determined by the articles of incorporation, bylaws, or a written agreement, the price and terms so fixed or determined govern the compulsory purchase unless the purchaser defaults, in which event the buyer is entitled to commence a proceeding for dissolution under 35-9-207.

History: En. Sec. 9, Ch. 432, L. 1987.

Cross-References

Court action to compel purchase, 35-9-207.

35-9-207. Court action to compel purchase. (1) (a) If an offer to purchase shares made under 35-9-206 is rejected or if no offer is made, the person exercising the compulsory purchase right may commence a proceeding against the corporation to compel the purchase in the district court of the county where the corporation's principal office is located or, if there is no principal office in this state, its registered office.

(b) The corporation at its expense shall notify in writing all of its shareholders, and any other person the court directs, of the commencement of the proceeding.

(c) The jurisdiction of the court in which the proceeding is commenced under this subsection is plenary and exclusive.

(2) (a) The court shall determine the fair value of the shares subject to compulsory purchase in accordance with the standards set forth in 35-9-503, together with terms for the purchase.

(b) Upon making these determinations, the court shall order the corporation to purchase or cause the purchase of the shares or empower the person exercising the compulsory purchase right to have the corporation dissolved.

(3) After the purchase order is entered, the corporation may petition the court to modify the terms of purchase and the court may do so if it finds that changes in the financial or legal ability of the corporation or other purchaser to complete the purchase justify a modification.

(4) If the corporation or other purchaser does not make a payment required by the court's order within 30 days of its due date, the seller may petition the court to dissolve the corporation and, absent a showing of good cause for not making the payment, the court shall do so.

(5) A person making a payment to prevent or cure a default by the corporation or other purchaser is entitled to recover the payment from the defaulter.

History: En. Sec. 10, Ch. 432, L. 1987.

Cross-References

Determination of share value by court, 35-9-503.

35-9-208. Court costs and other expenses. (1) The court in a proceeding commenced under 35-9-207 shall determine the total costs of the proceeding, including the reasonable compensation and expenses of appraisers appointed by the court and of counsel and experts employed by the parties. Except as provided in subsection (2), the court shall assess these costs equally against the corporation and the party exercising the compulsory purchase right.

(2) The court may assess all or a portion of the total costs of the proceeding:

(a) against the person exercising the compulsory purchase right if the court finds that the fair value of the shares does not substantially exceed the corporation's last purchase offer made before commencement of the proceeding and that the person's failure to accept the offer was arbitrary, vexatious, or otherwise not in good faith; or

(b) against the corporation if the court finds that the fair value of the shares substantially exceeds the corporation's last sale offer made before commencement of the proceeding and that the offer was arbitrary, vexatious, or otherwise not made in good faith.

History: **En. Sec. 11, Ch. 432, L. 1987.**

Part 3

Regulation and Operation

35-9-301. Shareholder agreements. (1) All the shareholders of a statutory close corporation may agree in writing to regulate the exercise of the corporate powers and the management of the business and affairs of the corporation or the relationship among the shareholders of the corporation.

(2) An agreement authorized by this section is effective even though:

(a) it eliminates a board of directors;

(b) it restricts the discretion or powers of the board or authorizes director proxies or weighted voting rights;

(c) its effect is to treat the corporation as a partnership; or

(d) it creates a relationship among the shareholders or between the shareholders and the corporation that would otherwise be appropriate only among partners.

(3) If the corporation has a board of directors, an agreement authorized by this section restricting the discretion or powers of the board relieves directors of liability imposed by law and imposes that liability on each person in whom the board's discretion or power is vested to the extent that the discretion or powers of the board of directors are governed by the agreement.

(4) A provision eliminating a board of directors in an agreement authorized by this section is not effective unless the articles of incorporation contain a statement to that effect as required by 35-9-302.

(5) A provision entitling one or more shareholders to dissolve the corporation under 35-9-404 is effective only if a statement of this right is contained in the articles of incorporation.

(6) To amend an agreement authorized by this section, all the shareholders shall approve the amendment in writing unless the agreement provides otherwise.

(7) Subscribers for shares may act as shareholders with respect to an agreement authorized by this section if shares are not issued when the agreement was made.

(8) This section does not prohibit any other agreement between or among shareholders in a statutory close corporation.

History: **En. Sec. 12, Ch. 432, L. 1987.**

Cross-References

Elimination of board of directors, 35-9-302.

Dissolution at option of shareholder, 35-9-404.

35-9-302. Elimination of board of directors. (1) A statutory close corporation may operate without a board of directors if its articles of incorporation contain a statement to that effect.

(2) An amendment to articles of incorporation eliminating a board of directors must be approved by:

(a) all the shareholders of the corporation, whether or not otherwise entitled to vote on amendments;

(b) if no shares have been issued, by all the subscribers for shares, if any; or

(c) if there are no subscribers, by all the incorporators.

(3) While a corporation is operating without a board of directors as authorized by subsection (1):

(a) all corporate powers must be exercised by or under the authority of and the business and affairs of the corporation managed under the direction of the shareholders;

(b) unless the articles of incorporation provide otherwise:

(i) action requiring director approval or both director and shareholder approval is authorized if approved by the shareholders; and

(ii) action requiring a majority or greater percentage vote of the board of directors is authorized if approved by the majority or greater percentage of the votes of shareholders entitled to vote on the action;

(c) a shareholder is not liable for his act or omission, even though a director would be, unless the shareholder was entitled to vote on the action;

(d) a requirement by a state or the United States that a document delivered for filing contain a statement that specified action has been taken by the board of directors is satisfied by a statement that the corporation is a statutory close corporation without a board of directors and that the action was approved by the shareholders; and

(e) the shareholders may by resolution appoint one or more shareholders to sign documents as designated directors.

(4) An amendment to articles of incorporation deleting the statement eliminating a board of directors must be approved by the holders of at least two-thirds of the votes of each class or series of shares of the corporation, voting as separate voting groups, whether or not otherwise entitled to vote on amendments. The amendment must also specify the number, names, and addresses of the corporation's directors or describe who will perform the duties of a board under 35-1-416.

History: En. Sec. 13, Ch. 432, L. 1987; amd. Sec. 200, Ch. 368, L. 1991.

35-9-303. Bylaws. (1) A statutory close corporation need not adopt bylaws if provisions required by law to be contained in bylaws are contained in either the articles of incorporation or a shareholder agreement authorized by 35-9-301.

(2) If a corporation does not have bylaws when its statutory close corporation status terminates under 35-9-402, the corporation shall immediately adopt bylaws under 35-1-236.

History: En. Sec. 14, Ch. 432, L. 1987; amd. Sec. 201, Ch. 368, L. 1991.

Cross-References

Shareholder agreements, 35-9-301.

Termination of statutory close corporation status, 35-9-402.

35-9-304. Annual meeting. (1) The annual meeting date for a statutory close corporation is the first business day after May 31 unless its articles of incorporation, bylaws, or a shareholder agreement authorized by 35-9-301 fixes a different date.

(2) A statutory close corporation need not hold an annual meeting unless one or more shareholders deliver written notice to the corporation requesting

a meeting at least 30 days before the meeting date determined under subsection (1).

History: En. Sec. 15, Ch. 432, L. 1987.

35-9-305. Holding more than one office — execution of documents in more than one capacity. An individual who holds more than one office in a statutory close corporation may execute, acknowledge, or verify in more than one capacity any document required to be executed, acknowledged, or verified by the holders of two or more offices.

History: En. Sec. 16, Ch. 432, L. 1987; amd. Sec. 1, Ch. 315, L. 1989; amd. Sec. 184, Ch. 368, L. 1991.

35-9-306. Limited liability. The failure of a statutory close corporation to observe the usual corporate formalities or requirements relating to the exercise of its corporate powers or management of its business and affairs is not a ground for imposing personal liability on the shareholders for liabilities of the corporation.

History: En. Sec. 17, Ch. 432, L. 1987.

Cross-References

Liability for preincorporation transactions, 35-1-119.

Liability of members of limited liability company to third parties, 35-8-304.

Elimination of board of directors, 35-9-302.

Dissolution at option of shareholder, 35-9-404.

Part 4
Reorganization and Dissolution

35-9-401. Merger — share exchange — sale of assets. (1) A plan of merger or share exchange:

(a) that if effected would terminate statutory close corporation status must be approved by the holders of at least two-thirds of the votes of each class or series of shares of the statutory close corporation, voting as separate voting groups, whether or not the holders are otherwise entitled to vote on the plan; and

(b) that if effected would create the surviving corporation as a statutory close corporation must be approved by the holders of at least two-thirds of the votes of each class or series of shares of the surviving corporation, voting as separate voting groups, whether or not the holders are otherwise entitled to vote on the plan.

(2) A sale, lease, exchange, or other disposition of all or substantially all of the property of a statutory close corporation, with or without the good will, if not made in the usual and regular course of business, must be approved by the holders of at least two-thirds of the votes of each class or series of shares of the corporation, voting as separate voting groups, whether or not the holders are otherwise entitled to vote on the transaction.

History: En. Sec. 18, Ch. 432, L. 1987.

Cross-References

Merger, consolidation, share exchange, and sale of assets of business corporation, Title 35, ch. 1, part 8.

35-9-402. Termination of statutory close corporation status. (1) A statutory close corporation may terminate its statutory close corporation status by amending its articles of incorporation to delete the statement that it is a statutory close corporation. If the statutory close corporation has elected to operate without a board of directors under 35-9-302, the amendment must delete the statement dispensing with the board of directors from its articles of incorporation.

(2) An amendment terminating statutory close corporation status must be approved by the holders of at least two-thirds of the votes of each class or series of shares of the corporation, voting as separate voting groups, whether or not the holders are otherwise entitled to vote on amendments.

(3) If an amendment to terminate statutory close corporation status is adopted, each shareholder who voted against the amendment is entitled to assert dissenters' rights under 35-1-826 through 35-1-839.

History: En. Sec. 19, Ch. 432, L. 1987; amd. Sec. 202, Ch. 368, L. 1991.

Cross-References

Effect of termination, 35-9-403.

35-9-403. Effect of termination of statutory close corporation status. (1) A corporation that terminates its status as a statutory close corporation is thereafter subject to all provisions of the Montana Business Corporation Act or, if incorporated under the Montana Professional Corporation Act, to all provisions of that act.

(2) Termination of statutory close corporation status does not affect any right of a shareholder or of the corporation under an agreement or the articles of incorporation unless this chapter, the Montana Business Corporation Act, or another law of this state invalidates the right.

History: En. Sec. 20, Ch. 432, L. 1987.

35-9-404. Shareholder option to dissolve corporation. (1) The articles of incorporation of a statutory close corporation may authorize one or more shareholders, or the holders of a specified number or percentage of shares of any class or series, to dissolve the corporation at will or upon the occurrence of a specified event or contingency. The shareholder or shareholders exercising this authority shall give written notice of the intent to dissolve to all the other shareholders. Thirty-one days after the effective date of the notice, the corporation shall begin to wind up and liquidate its business and affairs and file articles of dissolution under 35-1-931 through 35-1-935.

(2) Unless the articles of incorporation provide otherwise, an amendment to the articles of incorporation to add, change, or delete the authority to dissolve described in subsection (1) must be approved by the holders of all the outstanding shares, whether or not otherwise entitled to vote on amendments, or if no shares have been issued, by all the subscribers for shares, if any, or if there are no subscribers, by all the incorporators.

History: En. Sec. 21, Ch. 432, L. 1987; amd. Sec. 203, Ch. 368, L. 1991.

Cross-References

Dissolution and liquidation of business corporation, Title 35, ch. 1, part 9.

Part 5
Shareholder Protection

35-9-501. Court action to protect shareholders. (1) Subject to satisfying the conditions of subsections (3) and (4), a shareholder of a statutory close corporation may petition the district court for any of the relief described in 35-9-502 through 35-9-504 if:

(a) the directors or those in control of the corporation have acted, are acting, or will act in a manner that is illegal, oppressive, fraudulent, or unfairly prejudicial to the petitioner, whether in his capacity as shareholder, director, or officer of the corporation;

(b) the directors or those in control of the corporation are deadlocked in the management of the corporation's affairs, the shareholders are unable to break the deadlock, and the corporation is suffering or will suffer irreparable injury or the business and affairs of the corporation can no longer be conducted to the advantage of the shareholders generally because of the deadlock; or

(c) there exists one or more grounds for judicial dissolution of the corporation under 35-1-938.

(2) A shareholder shall commence a proceeding under subsection (1) in the district court of the county where the corporation's principal office is located or, if there is no principal office in this state, its registered office. The jurisdiction of the court in which the proceeding is commenced is plenary and exclusive.

(3) If a shareholder has agreed in writing to pursue a nonjudicial remedy to resolve disputed matters, he may not commence a proceeding under this section with respect to the matters until he has exhausted the nonjudicial remedy.

(4) If a shareholder has dissenters' rights under this chapter or 35-1-826 through 35-1-839 with respect to proposed corporate actions, he must commence a proceeding under this section before he is required to give notice of his intent to demand payment under 35-1-826 through 35-1-839 or the proceeding is barred.

(5) Except as provided in subsections (3) and (4), a shareholder's right to commence a proceeding under this section and the remedies available under 35-9-502 through 35-9-504 are in addition to any other right or remedy he may have.

History: En. Sec. 22, Ch. 432, L. 1987; amd. Sec. 204, Ch. 368, L. 1991.

Cross-References

Shareholder agreements, 35-9-301.

Relief, 35-9-502 through 35-9-504.

35-9-502. Ordinary relief. (1) If the court finds that one or more of the grounds for relief described in 35-9-501(1) exist, it may order one or more of the following types of relief:

(a) the performance, prohibition, alteration, or setting aside of any action of the corporation or of its shareholders, directors, or officers or any other party to the proceeding;

(b) the cancellation or alteration of any provision in the corporation's articles of incorporation or bylaws;

(c) the removal from office of any director or officer;

(d) the appointment of any individual as a director or officer;

(e) an accounting with respect to any matter in dispute;

(f) the appointment of a custodian to manage the business and affairs of the corporation;

(g) the appointment of a provisional director who has all the rights, powers, and duties of a duly elected director to serve for the term and under the conditions prescribed by the court;

(h) the payment of dividends;

(i) the award of damages to any aggrieved party.

(2) If the court finds that a party to the proceeding acted arbitrarily, vexatiously, or otherwise not in good faith, it may award one or more other parties their reasonable expenses, including counsel fees and the expenses of appraisers or other experts, incurred in the proceeding.

History: En. Sec. 23, Ch. 432, L. 1987.

35-9-503. Extraordinary relief — share purchase. (1) If the court finds that the ordinary relief described in 35-9-502(1) is or would be inadequate or inappropriate, it may order the corporation dissolved under 35-9-504 unless the corporation or one or more of its shareholders purchases all the shares of the shareholder for their fair value and on terms determined under subsection (2).

(2) If the court orders a share purchase, it shall:

(a) determine the fair value of the shares, considering among other relevant evidence:

(i) the going concern value of the corporation;

(ii) any agreement among some or all of the shareholders fixing the price or specifying a formula for determining share value for any purpose;

(iii) the recommendations of appraisers, if any, appointed by the court; and

(iv) any legal constraints on the corporation's ability to purchase the shares;

(b) specify the terms of the purchase, including if appropriate:

(i) terms for installment payments;

(ii) subordination of the purchase obligation to the rights of the corporation's other creditors;

(iii) security for a deferred purchase price; and

(iv) a covenant not to compete or other restriction on the seller;

(c) require the seller to deliver all his shares to the purchaser upon receipt of the purchase price or the first installment of the purchase price;

(d) provide that after the seller delivers his shares he has no further claim against the corporation, its directors, officers, or shareholders, other than a claim to any unpaid balance of the purchase price and a claim under any agreement with the corporation or the remaining shareholders that is not terminated by the court; and

(e) provide that if the purchase is not completed in accordance with the specified terms, the corporation is to be dissolved under 35-9-504.

(3) After the purchase order is entered, any party may petition the court to modify the terms of the purchase and the court may do so if it finds that changes in the financial or legal ability of the corporation or other purchaser to complete the purchase justify a modification.

(4) If the corporation is dissolved because the share purchase was not completed in accordance with the court's order, the selling shareholder has the same rights and priorities in the corporation's assets as if the sale had not been ordered.

History: En. Sec. 24, Ch. 432, L. 1987.

35-9-504. Extraordinary relief — dissolution. (1) The court may dissolve the corporation if it finds:

(a) one or more grounds for judicial dissolution under 35-1-938; or

(b) all other relief ordered by the court under 35-9-502 or 35-9-503 has failed to resolve the matters in dispute.

(2) In determining whether to dissolve the corporation, the court shall consider among other relevant evidence the financial condition of the corporation but may not refuse to dissolve solely because the corporation has accumulated earnings or current operating profits.

History: En. Sec. 25, Ch. 432, L. 1987; amd. Sec. 205, Ch. 368, L. 1991.

CHAPTER 10

PARTNERSHIPS IN GENERAL

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Part 1
Preliminary Provisions

35-10-101. Short title. This chapter may be cited as the "Uniform Partnership Act".

History: En. Sec. 1, Ch. 251, L. 1947; R.C.M. 1947, 63-101.

35-10-102. Definitions. In this chapter, the following definitions apply:

(1) "Business" includes every trade, occupation, or profession.

(2) "Debtor in bankruptcy" means a person who is the subject of:

(a) an order for relief under Title 11 of the United States Code or a comparable order under a successor statute of general application; or

(b) a comparable order under state law governing insolvency.

(3) "Distribution" means a transfer of money or other property from a partnership to a partner in the partner's capacity as a partner or to the partner's transferee.

(4) "Limited liability partnership" means a partnership registered under 35-10-701 and includes both domestic and foreign limited liability partnerships.

(5) (a) "Partnership" means an association of two or more persons to carry on as co-owners a business for profit formed under 35-10-202, a predecessor law, or a comparable law of another jurisdiction.

(b) The term includes but is not limited to a limited liability partnership for all purposes of the laws of this state and all licensing laws, whether for professionals or otherwise.

(6) "Partnership agreement" means an agreement, written or oral, among the partners concerning the partnership.

(7) "Partnership at will" means a partnership in which the partners have not agreed to remain partners until the expiration of a definite term or the completion of a particular undertaking.

(8) "Person" means:

(a) an individual;

(b) a corporation;

(c) a business trust;

(d) an estate;

(e) a trust;

(f) a partnership;

(g) an association;

(h) a joint venture;

(i) a government;

(j) a governmental subdivision, agency, or instrumentality; or

(k) any other legal or commercial entity.

(9) "Property" means all property, real, personal, or mixed, tangible or intangible, or any interest therein.

(10) "State" means a state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or any territory or insular possession subject to the jurisdiction of the United States.

(11) "Statement" means a statement of partnership authority under 35-10-310, a statement of denial under 35-10-311, a statement of dissociation

under 35-10-622, a statement of dissolution under 35-10-627, a statement of merger under 35-10-643, an application for registration of assumed business name or a renewal of registration under 35-10-701, or an amendment, cancellation, or withdrawal of the foregoing.

(12) "Transfer" includes an assignment, conveyance, lease, mortgage, deed, and encumbrance.

History: En. Sec. 2, Ch. 251, L. 1947; R.C.M. 1947, 63-102; amd. Sec. 1, Ch. 238, L. 1993; amd. Sec. 7, Ch. 449, L. 1995.

35-10-103. Knowledge and notice. (1) A person knows a fact if the person has knowledge of it.

(2) A person has notice of a fact if the person:

(a) knows of it;

(b) has received a notification of it; or

(c) has reason to know it exists from all of the facts known to that person at the time in question.

(3) A person notifies or gives a notification to another by taking steps reasonably required to inform the other person in the ordinary course of business, whether or not the other person learns of it.

(4) A person receives notification when it:

(a) comes to the person's attention; or

(b) is duly delivered at the person's place of business or at any other place held out by the person as a place for receiving communications.

(5) Except as provided in subsection (6), a person other than an individual knows, has notice, or receives a notification of a fact for purposes of a particular transaction when the individual conducting the transaction knows, has notice, or receives a notification of the fact or in any event when the fact would have been brought to the individual's attention if the person had exercised reasonable diligence. The person exercises reasonable diligence if the person maintains reasonable routines for communicating significant information to the individual conducting the transaction and there is reasonable compliance with the routines. Reasonable diligence does not require an individual acting for the person to communicate information unless the communication is part of the individual's regular duties or the individual has reason to know of the transaction and that the transaction would be materially affected by the information.

(6) A partner's knowledge, notice, or receipt of a notification of a fact relating to the partnership is effective immediately as knowledge by, notice to, or receipt of a notification by the partnership but is not effective as such if the partner committed or consented to a fraud on the partnership.

History: En. Sec. 3, Ch. 251, L. 1947; R.C.M. 1947, 63-103; amd. Sec. 2, Ch. 238, L. 1993.

35-10-104. Uniformity of application and construction. This chapter must be applied and construed to effectuate its general purpose to make uniform the law with respect to the subject of this chapter among states enacting it.

History: En. Sec. 4, Ch. 251, L. 1947; R.C.M. 1947, 63-104; amd. Sec. 3, Ch. 238, L. 1993.

Cross-References

Ex post facto, obligation of contracts, and irrevocable privileges, Art. II, sec. 31, Mont. Const.

Statutes in derogation of common law — liberal construction, 1-2-103.

Agency, Title 28, ch. 10.

Partner by estoppel, 35-10-308.

35-10-105. Supplemental principles of law. (1) Unless displaced by a particular provision of this chapter, the principles of law and equity supplement this chapter.

(2) If an obligation to pay interest arises under this chapter and the rate is not specified, the rate is that specified in 31-1-106.

History: En. Sec. 5, Ch. 251, L. 1947; R.C.M. 1947, 63-105; amd. Sec. 5, Ch. 238, L. 1993.

Cross-References

Maxims of jurisprudence, Title 1, ch. 3.

Uniform Commercial Code, Title 30, ch. 1 through 9.

35-10-106. Effect of partnership agreement — nonwaivable provisions. (1) Except as provided in subsection (2), a partnership agreement governs relations among the partners and between the partners and the partnership. To the extent the partnership agreement does not otherwise provide, this chapter governs relations among the partners and between the partners and the partnership.

(2) A partnership agreement may not:

(a) vary the rights and duties under 35-10-111 except to eliminate the duty to provide copies of statements to all of the partners;

(b) unreasonably restrict a partner's right of access to books and records under 35-10-402(2);

(c) eliminate the duty of loyalty under 35-10-405(3);

(d) unreasonably reduce the duty of care under 35-10-405(4);

(e) eliminate the obligation of good faith and fair dealing under 35-10-405(5);

(f) vary the power to withdraw as a partner under 35-10-616(1), except to require the notice to be in writing;

(g) vary the right to expulsion of a partner by a court in the events specified in 35-10-616(5);

(h) vary the requirement to wind up the partnership business in cases specified in 35-10-624(4), (5), or (6); or

(i) restrict rights of third parties under this chapter.

History: En. Sec. 4, Ch. 238, L. 1993.

35-10-107 through 35-10-110 reserved.

35-10-111. Execution, filing, and recording of statements. (1) A statement may be filed in the office of the secretary of state. A certified copy of a statement that is filed in an office in another state may be filed in the office of the secretary of state. Either filing has the effect provided in this chapter with respect to partnership property located in or transactions that occur in this state.

(2) A certified copy of a statement that has been filed in the office of the secretary of state and recorded in the office for recording transfers of real property has the effect provided for recorded statements in this chapter. A recorded statement that is not a certified copy of a statement in the office of

the secretary of state does not have the effect provided for recorded statements in this chapter.

(3) A statement filed by a partnership must be executed by at least two partners. Other statements must be executed by a partner or other person authorized by this chapter. The statement must be in the English language. An individual who executes a statement as or on behalf of a partner or other person named as a partner in a statement shall state beneath or opposite the person's signature the person's name and the capacity in which the person signs. The execution of any document required to be filed with the secretary of state under this chapter constitutes an affirmation under penalties of false swearing by each person executing the document that the facts stated are true.

(4) A person authorized by this chapter to file a statement may amend or cancel the statement by filing an amendment or cancellation that names the partnership, identifies the statement, and states the substance of the amendment or cancellation.

(5) A person who files a statement pursuant to this section shall promptly send a copy of the statement to every nonfiling partner and any other person named as a partner in the statement. Failure to send a copy of a statement to a partner or other person does not limit the effectiveness of the statement as to a person not a partner.

(6) The secretary of state shall establish by rule fees for filing statements, issuing certificates, copying statements, priority handling, transmitting or filing facsimile copies, and providing computer-generated information. The fees must be reasonably related to the costs of processing the statements and providing the services. The secretary of state shall maintain records sufficient to support the fees established under this section. The secretary of state may adopt rules necessary to perform any duty required of the secretary of state by this chapter.

History: En. Sec. 6, Ch. 238, L. 1993.

35-10-112. Facsimile filing — requirements — liability. (1) The secretary of state shall treat a facsimile copy of a document that is required or permitted to be filed under this chapter and the signatures on the facsimile copy in the same manner as an original for purposes of this chapter. If all other requirements are met, the date of filing relates back to the date of receipt of the facsimile copy.

(2) A person who files a false document by facsimile copy is liable to an aggrieved party for three times the amount of damages resulting from the filing of the false document.

History: En. Sec. 7, Ch. 238, L. 1993; amd. Sec. 8, Ch. 290, L. 1997.

35-10-113. Filing with secretary of state. (1) The original signed copy, together with a duplicate copy that may be either a signed, photocopied, or confirmed copy, of any statement filed pursuant to this chapter must be delivered to the secretary of state. If the secretary of state determines that the documents conform to the filing provisions of this chapter and all required filing fees have been paid, the secretary of state shall:

(a) endorse on each signed original and duplicate copy the word "filed" and the date and time of acceptance for filing;

(b) retain the signed original in the secretary of state's files; and

(c) return the duplicate copy to the person who filed it or the person's representative.

(2) The secretary of state may by rule prescribe and furnish forms or computer formats for any statement to be filed with the secretary of state under this chapter. If the secretary of state requires, the use of any forms or formats is mandatory.

(3) All partnerships filing statements pursuant to this chapter shall first register the business name as an assumed business name pursuant to Title 30, chapter 13, part 2.

History: En. Sec. 8, Ch. 238, L. 1993.

35-10-114 and 35-10-115 reserved.

35-10-116. Law governing internal affairs. Except as provided in 35-10-710, the law of the state in which a partnership has its chief executive office governs the partnership's internal affairs.

History: En. Sec. 9, Ch. 238, L. 1993; amd. Sec. 8, Ch. 449, L. 1995.

35-10-117. Partnership subject to amendment of repeal of chapter. A partnership governed by this chapter is subject to any amendment or repeal of this chapter.

History: En. Sec. 10, Ch. 238, L. 1993.

Part 2
Nature of Partnership

35-10-201. Partnership as entity. A partnership is an entity.

History: En. Sec. 6, Ch. 251, L. 1947; R.C.M. 1947, 63-106; amd. Sec. 11, Ch. 238, L. 1993.

Cross-References

Limited partnerships, Title 35, ch. 12.

35-10-202. Creation of partnership. (1) Except as provided in subsection (2), the association of two or more persons to carry on as co-owners a business for profit creates a partnership, whether or not the persons intend to create a partnership.

(2) An association created under a statute other than this chapter, a predecessor law, or a comparable law of another jurisdiction is not a partnership.

(3) In determining whether a partnership is created, the following rules apply:

(a) Joint tenancy, tenancy in common, tenancy by the entireties, joint property, common property, or part ownership does not by itself establish a partnership even if the co-owners share profits made by the use of the property.

(b) The sharing of gross returns does not by itself establish a partnership even if the persons sharing them have a joint or common right or interest in property from which the returns are derived.

(c) A person who receives a share of the profits of a business is presumed to be a partner in the business, unless the profits were received in payment:

(i) of a debt by installments or otherwise;

(ii) for services as an independent contractor or of wages or other compensation to an employee;

(iii) of rent;

(iv) of an annuity or other retirement or health benefit to a beneficiary, representative, or designee of a deceased or retired partner;

(v) of interest or of another charge on a loan, even if the amount of payment varies with the profits of the business, including a direct or indirect present or future ownership of the collateral or rights to income, proceeds, or increase in value derived from the collateral; or

(vi) for the sale of the goodwill of a business or other property by installments or otherwise.

(4) Except as provided by 35-10-308, persons who are not partners as to each other are not partners as to other persons.

(5) A partnership created under this chapter is a general partnership, and the partners are general partners of the partnership.

History: En. Sec. 7, Ch. 251, L. 1947; amd. Sec. 28, Ch. 535, L. 1975; R.C.M. 1947, 63-107; amd. Sec. 12, Ch. 238, L. 1993.

Cross-References

Exception — sale of goodwill of business, 28-2-704.

Exception — dissolution of partnership, 28-2-705.

Loans of money — interest rates, Title 31, ch. 1, part 1.

Debtor defined, 31-2-101.

Payment of wages generally, 39-3-204.

Kinds of ownership interests, Title 70, ch. 1, part 3.

Rental agreement — terms and conditions, 70-24-201.

UPC — intestacy, wills, and donative transfers, Title 72, ch. 2.

35-10-203. Partnership property. (1) Property transferred to or otherwise acquired by a partnership is property of the partnership and not of the partners individually.

(2) Property is partnership property if acquired in the name of:

(a) the partnership; or

(b) one or more partners with an indication in the instrument transferring title to the property of the person's capacity as a partner or of the existence of a partnership but without an indication of the name of the partnership.

(3) Property is acquired in the name of the partnership by a transfer to:

(a) the partnership in its name; or

(b) one or more partners in their capacity as partners in the partnership if the name of the partnership is indicated in the instrument transferring title to the property.

(4) Property is presumed to be partnership property if purchased with partnership assets even if not acquired in the name of the partnership or of one or more partners with an indication in the instrument transferring title to the property of the person's capacity as a partner or of the existence of a partnership.

(5) Property acquired in the name of one or more of the partners without an indication in the instrument transferring title to the property of the person's capacity as a partner or of the existence of a partnership and without use of partnership assets is presumed to be separate property even if used for partnership purposes.

History: En. Sec. 8, Ch. 251, L. 1947; R.C.M. 1947, 63-108; amd. Sec. 13, Ch. 238, L. 1993; (2) thru (5)En. Sec. 14, Ch. 238, L. 1993.

Cross-References

Property assessment, 15-8-402.

Conveyance of partnership's real property, 35-10-302.

Property rights of partner, Title 35, ch. 10, part 5.

Part 3

Relation of Partner and Partnership to Other Persons

Part Cross-References

Relations between partners and with third persons in mining partnerships, Title 35, ch. 13, part 2.

35-10-301. Partner as agent of partnership. Subject to the effect of a statement of partnership authority pursuant to 35-10-310:

(1) each partner is an agent of the partnership for the purpose of its business. An act of a partner, including the execution of an instrument in the partnership name, for apparently carrying on in the ordinary course of the partnership business or business of the kind carried on by the partnership binds the partnership unless the partner has no authority to act for the partnership in the particular matter and the person with whom the partner is dealing knows or has received a notification that the partner lacks authority.

(2) an act of a partner that is not apparently for carrying on in the ordinary course of the partnership business or business of the kind carried on by the partnership binds the partnership only if the act was authorized by the other partners.

History: En. Sec. 9, Ch. 251, L. 1947; R.C.M. 1947, 63-201; amd. Sec. 15, Ch. 238, L. 1993.

Cross-References

Partner's application to discharge attachment, 35-10-506.

35-10-302. Transfer of partnership property. (1) Subject to the effect of a statement of partnership authority pursuant to 35-10-310:

(a) partnership property held in the name of the partnership may be transferred by an instrument of transfer executed by a partner in the partnership name;

(b) partnership property held in the name of one or more partners with an indication in the instrument transferring the property to them of their capacity as partners or of the existence of a partnership, but without an indication of the name of the partnership, may be transferred by an instrument of transfer executed by the persons in whose name the property is held; and

(c) a partnership may recover property transferred under this subsection if it proves that execution of the instrument of transfer did not bind the partnership under 35-10-301 unless the property was transferred by the initial transferee or a person claiming through the initial transferee to a subsequent transferee who gave value without having notice that the person who executed the instrument of initial transfer lacked authority to bind the partnership.

(2) Partnership property held in the name of one or more persons other than the partnership without an indication in the instrument transferring the property to them of their capacity as partners or of the existence of a partnership may be transferred free of any claims of the partnership or the

partners by the persons in whose name the property is held to a transferee who gives value without having notice that it is partnership property.

(3) If a person holds all of the partners' interests in the partnership, all of the partnership property vests in that person. The person may execute a document in the name of the partnership to evidence vesting of the property in that person and may file or record the document.

History: En. Sec. 10, Ch. 251, L. 1947; R.C.M. 1947, 63-202; amd. Sec. 16, Ch. 238, L. 1993.

Cross-References

Partnership property, 35-10-203.

Property rights of partner, Title 35, ch. 10, part 5.

35-10-303. Repealed. Sec. 60, Ch. 238, L. 1993.

History: En. Sec. 11, Ch. 251, L. 1947; R.C.M. 1947, 63-203.

35-10-304. Repealed. Sec. 60, Ch. 238, L. 1993.

History: En. Sec. 12, Ch. 251, L. 1947; R.C.M. 1947, 63-204.

35-10-305. Partnership liable for partner's actionable conduct. (1) A partnership is liable for loss or injury caused to a person, or for a penalty incurred, as a result of a wrongful act or omission or other actionable conduct of a partner acting in the ordinary course of business of the partnership or with the authority of the partnership.

(2) If, in the course of its business, a partnership receives money or property of a person not a partner and that money or property is misapplied by a partner while it is in the custody of the partnership, the partnership is liable for the loss.

History: En. Sec. 13, Ch. 251, L. 1947; R.C.M. 1947, 63-205; amd. Sec. 19, Ch. 238, L. 1993.

35-10-306. Repealed. Sec. 60, Ch. 238, L. 1993.

History: En. Sec. 14, Ch. 251, L. 1947; R.C.M. 1947, 63-206.

35-10-307. Partner's liability. (1) Except as provided in subsection (2), all partners are liable jointly and severally for all obligations of the partnership unless otherwise agreed by the claimant or provided by law.

(2) Except as provided in subsections (3) and (4), a partner of a limited liability partnership is not liable, directly or indirectly, including by way of indemnification, contribution, assessment, or otherwise, for:

(a) any debts, obligations, or liabilities of or chargeable to the limited liability partnership or another partner of the limited liability partnership, whether arising in tort, contract, or otherwise; or

(b) the acts or omissions of any other partner or agents, contractors, or employees of the limited liability partnership if the debts, obligations, or liabilities arise or are incurred while the limited liability partnership is registered under 35-10-701.

(3) Subsection (2) does not affect the liability of a partner in a limited liability partnership for the partner's own negligence, wrongful act, or misconduct, including without limitation an act under 35-10-628(2), or that of any person under the partner's direct supervision and control.

(4) Subsection (2) does not affect or impair the ability of a partner of a limited liability partnership to act as a guarantor or surety for, provide

collateral for, or otherwise agree to be primarily or contingently liable for the debts, obligations, or liabilities of a limited liability partnership.

(5) Subsection (2) does not affect the liability of a limited liability partnership for partnership debts, obligations, or liabilities to the extent of partnership assets.

(6) Unless the partner is personally liable under this section, a partner in a limited liability partnership is not a proper party to a proceeding by or against a limited liability partnership to recover any debts, obligations, or liabilities of or chargeable to the limited liability partnership.

History: En. Sec. 15, Ch. 251, L. 1947; R.C.M. 1947, 63-207; amd. Sec. 20, Ch. 238, L. 1993; amd. Sec. 9, Ch. 449, L. 1995.

Cross-References

Multiple defendants jointly and severally liable — right of contribution, 27-1-703.

Guaranty, Title 28, ch. 11, parts 1 and 2.

Suretyship, Title 28, ch. 11, part 4.

Liability of limited partner, 35-12-607, 35-12-703, 35-12-902, 35-12-1008.

35-10-308. Purported partner. (1) If a person, by words or conduct, purports to be a partner or consents to being represented by another as a partner in a partnership or with one or more persons who are not partners, the purported partner is liable to a person to whom the representation is made:

(a) if that person, relying on the representation, enters into a transaction with the actual or purported partnership; and

(b) the purported partner would have been personally liable for obligations of the partnership under 35-10-307 or 35-10-629 if the purported partner had been a partner.

(2) Subject to subsection (1), if the representation, either by the purported partner or by a person with the purported partner's consent, is made in a public manner, the purported partner is liable to a person who relies upon the purported partnership even if the purported partner is not aware of being held out as a partner to the claimant. If partnership liability results, the purported partner is liable as if the purported partner were a partner. If no partnership liability results, the purported partner is liable jointly and severally with any other person consenting to the representation.

(3) Subject to subsection (1), if a person is represented to be a partner in an existing partnership or with one or more persons who are not partners, the purported partner is an agent of persons consenting to the representation to bind them to the same extent and in the same manner as if the purported partner were a partner with respect to persons who enter into transactions in reliance upon the representation. If all of the partners of the existing partnership consent to the representation, a partnership act or obligation results. Subject to subsection (1), if fewer than all of the partners of the existing partnership consent to the representation, the person acting and the partners consenting to the representation are jointly and severally liable as if the person had actually been a partner.

(4) A person is not a partner in a partnership merely because the person is named by another in a statement of partnership authority.

(5) A person does not continue to be a partner merely because of a failure to file a statement of dissociation or to amend a statement of partnership authority to indicate the partner's dissociation from the partnership.

History: **En. Sec. 16, Ch. 251, L. 1947; R.C.M. 1947, 63-208; amd. Sec. 22, Ch. 238, L. 1993; amd. Sec. 10, Ch. 449, L. 1995.**

Cross-References

Agency, Title 28, ch. 10.

Rules for determining existence of partnership, 35-10-202.

35-10-309. Liability of incoming partner. A person admitted as a partner into a partnership is liable for all obligations of the partnership incurred before the person's admission as if the person were a partner when the obligations were incurred, but the liability may be satisfied only out of partnership property.

History: **En. Sec. 17, Ch. 251, L. 1947; R.C.M. 1947, 63-209; amd. Sec. 23, Ch. 238, L. 1993.**

35-10-310. Statement of partnership authority. (1) A partnership may file a statement of partnership authority, which:

(a) must include:

(i) the name of the partnership;

(ii) the street address of its chief executive office and of one office in this state, if there is one;

(iii) the names and mailing addresses of all of the partners or of an agent appointed and maintained by the partnership for the purpose of subsection (2); and

(iv) the names of the partners authorized to execute an instrument transferring real property held in the name of the partnership; and

(b) may state the authority or limitations on the authority of some or all of the partners to enter into other transactions on behalf of the partnership and any other matter.

(2) If a statement of partnership authority names an agent, the agent shall maintain a list of the names and mailing addresses of all the partners and make it available to any person on request for good cause shown.

(3) If a filed statement of partnership authority is executed pursuant to 35-10-111(5) and states the name of the partnership but does not contain all of the other information required by subsection (1), the statement nevertheless operates with respect to a person not a partner as provided in subsections (4) and (5).

(4) Except as provided in subsection (7), a filed statement of partnership authority supplements the authority of a partner to enter into transactions on behalf of the partnership as follows:

(a) Except for transfers of real property, a grant of authority contained in a filed statement of partnership authority is conclusive in favor of a person who gives value without knowledge to the contrary so long as and to the extent that a limitation on that authority is not contained in another filed statement. A filed cancellation of a limitation on authority revives the previous grant of authority.

(b) A grant of authority to transfer real property held in the name of the partnership contained in a certified copy of a filed statement of partnership authority recorded in the office for recording transfers of that real property is conclusive in favor of a person who gives value without knowledge to the contrary so long as and to the extent that a certified copy of a filed statement containing a limitation on that authority is not then of record in the office for recording transfers of that real property. The recording in the office for recording transfers of that real property of a certified copy of a filed cancellation of a limitation on authority revives the previous grant of authority.

(5) A person not a partner is considered to know of a limitation on the authority of a partner to transfer real property held in the name of the partnership if a certified copy of the filed statement containing the limitation on authority is of record in the office for recording transfers of that real property.

(6) Except as provided in 35-10-622 and 35-10-627 and subsection (5) of this section, a person not a partner is not considered to know of a limitation on the authority of a partner merely because the limitation is contained in a filed statement.

(7) Unless canceled earlier, a filed statement of partnership authority is canceled by operation of law 5 years after the date on which the statement or the most recent amendment was filed with the secretary of state.

History: En. Sec. 17, Ch. 238, L. 1993.

35-10-311. Statement of denial. A partner or other person named as a partner in a filed statement of partnership authority or in a list maintained by an agent pursuant to 35-10-310(2) may file a statement of denial stating the name of the partnership and the fact that is being denied, which may include denial of a person's authority or status as a partner. A statement of denial is a limitation on authority to the extent provided in 35-10-310(4) and (5).

History: En. Sec. 18, Ch. 238, L. 1993.

35-10-312. Action by and against partnership and partners. (1) A partnership may sue and be sued in the name of the partnership.

(2) An action may be brought against the partnership and any or all of the partners who are personally liable for obligations of the partnership under 35-10-307 or 35-10-629 in the same action or in separate actions.

(3) A judgment against a partnership is not by itself a judgment against a partner. A judgment against a partnership may not be satisfied from a partner's assets unless there is also a judgment against the partner.

(4) A judgment creditor of a partner may not levy execution against the assets of the partner to satisfy a judgment based on a claim against the partnership unless:

(a) the partner is personally liable for the liability of the partnership under 35-10-307 or 35-10-629; and

(b) one of the following conditions is satisfied:

(i) a judgment based on the same claim has been obtained against the partnership and a writ of execution on the judgment has been returned unsatisfied in whole or in part;

(ii) (A) an involuntary case under Title 11 of the United States Code has been commenced against the partnership and has not been dismissed within 60 days after commencement or the partnership has commenced a voluntary case under Title 11 of the United States Code and the case has not been dismissed; and

(B) Title 11 of the United States Code permits a judgment creditor of a partner to levy execution against the assets of the partner to satisfy a judgment based on a claim against the partnership;

(iii) the partner has agreed that the creditor need not exhaust partnership assets;

(iv) a court grants permission to the judgment creditor to levy execution against the assets of a partner based on a finding that partnership assets subject to execution within this state are clearly insufficient to satisfy the judgment, that exhaustion of partnership assets is excessively burdensome, or that the grant of permission is an appropriate exercise of the court's equitable powers; or

(v) liability is imposed on the partner by law or contract independent of the existence of the partnership.

(5) This section applies to any partnership liability or obligation resulting from a representation by a partner or purported partner under 35-10-308(1), (2), or (3).

History: **En. Sec. 21, Ch. 238, L. 1993; amd. Sec. 11, Ch. 449, L. 1995.**

Part 4

Relation of Partners to Partnership and to One Another

Part Cross-References

Relations between partners and with third persons in mining partnerships, Title 35, ch. 13, part 2.

35-10-401. Partner's rights and duties. (1) A partnership shall establish an account for each partner. The partnership shall credit the account with an amount equal to the money plus the value of any other property, net of the amount of any liabilities, that the partner contributes to the partnership and the partner's share of the partnership profits. The partnership shall charge the account with an amount equal to the money plus the value of any other property, net of the amount of any liabilities, distributed by the partnership to the partner and the partner's share of the partnership losses. However, the partner is personally liable for the charges only as provided in 35-10-307 and 35-10-629.

(2) A partnership shall credit each partner's account with an equal share of the partnership profits. A partnership shall charge each partner with a share of the partnership losses, whether capital or operating, in proportion to the partner's share of the profits. However, a partner is personally liable for the charges as provided in 35-10-307 and 35-10-629.

(3) A partnership shall indemnify each partner for payments reasonably made and liabilities reasonably incurred by the partner in the ordinary and proper conduct of the business of the partnership or for the preservation of its business or property. However, a partner is not personally liable for the indemnification obligation of the partnership, except to the extent that the partner would be personally liable under 35-10-307 or 35-10-629 for the liabilities incurred by the indemnified partner.

(4) A partnership shall repay a partner who, in aid of the partnership, makes a payment or advance beyond the amount of capital the partner agreed to contribute.

(5) A payment made by a partner that gives rise to a partnership obligation under subsection (3) or (4) constitutes a loan to the partnership. Interest accrues from the date of the payment or advance.

(6) Each partner has equal rights in the management and conduct of the partnership business.

(7) A partner may use or possess partnership property only on behalf of the partnership.

(8) A partner is not entitled to remuneration for services performed for the partnership, except for reasonable compensation for services rendered in winding up the business of the partnership.

(9) A person may become a partner only with the consent of all the partners.

(10) A difference arising as to a matter in the ordinary course of business of a partnership may be decided by a majority of the partners. An act outside the ordinary course of business of a partnership and an amendment to the partnership agreement may be undertaken only with the consent of all the partners.

(11) This section does not affect the obligations of a partnership to other persons under 35-10-301.

History: En. Sec. 18, Ch. 251, L. 1947; R.C.M. 1947, 63-301; amd. Sec. 24, Ch. 238, L. 1993; amd. Sec. 12, Ch. 449, L. 1995.

Cross-References

Property rights, Title 35, ch. 10, part 5.

35-10-402. Partner's right to information. (1) A partnership shall keep its books and records, if any, at its chief executive office.

(2) A partnership shall provide partners and their agents and attorneys access to its books and records. It shall provide former partners and their agents and attorneys access to books and records pertaining to the period during which they were partners. The right of access provides the opportunity to inspect and copy books and records during ordinary business hours. A partnership may impose a reasonable charge, covering the costs of labor and material, for copies of documents furnished.

History: En. Sec. 19, Ch. 251, L. 1947; R.C.M. 1947, 63-302; amd. Sec. 26, Ch. 238, L. 1993.

35-10-403. Duty of partners to render information. Each partner and the partnership, on demand, shall furnish to a partner and to the legal representative of a deceased partner or of a partner under legal disability, to the extent just and reasonable, complete and accurate information concerning the partnership.

History: En. Sec. 20, Ch. 251, L. 1947; R.C.M. 1947, 63-303; amd. Sec. 27, Ch. 238, L. 1993.

35-10-404. Repealed. Sec. 60, Ch. 238, L. 1993.

History: En. Sec. 22, Ch. 251, L. 1947; R.C.M. 1947, 63-305.

35-10-405. General standards of partner's conduct. (1) The only fiduciary duties a partner owes to the partnership and the other partners are the duty of loyalty and the duty of care set forth in this section.

(2) A partner's duty of loyalty to the partnership and the other partners is limited to the following:

(a) to account to the partnership and hold as trustee for it any property, profit, or benefit derived:

(i) by the partner in the conduct and winding up of the partnership business;

(ii) from a use or appropriation by the partner of partnership property; or

(iii) from a use or appropriation of an opportunity without the consent of the other partners;

(b) to refrain from dealing with the partnership in the conduct or winding up of the partnership business as or on behalf of a party having an interest adverse to the partnership without the consent of the other partners; and

(c) to refrain from competing with the partnership in the conduct of partnership business before the dissolution of the partnership without the consent of the other partners.

(3) A partner's duty of loyalty may not be eliminated by agreement, but the partners by agreement may identify specific types or categories of activities that do not violate the duty of loyalty, if not manifestly unreasonable.

(4) A partner's duty of care to the partnership and the other partners in the conduct and winding up of the partnership business is limited to refraining from engaging in grossly negligent or reckless conduct, intentional misconduct, or a knowing violation of law.

(5) A partner shall discharge the duties to the partnership and the other partners under this chapter or under the partnership agreement and exercise any rights consistent with the obligation of good faith and fair dealing. The obligation of good faith and fair dealing may not be eliminated by agreement, but the partners by agreement may determine the standards by which the performance of the obligation is to be measured if the standards are not manifestly unreasonable.

(6) A partner does not violate a duty or obligation under this chapter or under the partnership agreement merely because the partner's conduct furthers the partner's own interest. A partner may lend money to and transact other business with the partnership. The rights and obligations of a partner who lends money to or transacts business with the partnership are the same as those of a person who is not a partner, subject to other applicable law.

(7) This section applies to a person winding up the partnership business as the personal or legal representative of the last surviving partner as if the person were a partner.

History: En. Sec. 21, Ch. 251, L. 1947; R.C.M. 1947, 63-304; amd. Sec. 28, Ch. 238, L. 1993.

Cross-References

Miscellaneous provisions relating to fiduciaries, Title 72, ch. 31.

35-10-406. Continuation of partnership beyond definite term or particular undertaking. (1) If a partnership for a definite term or particular undertaking is continued without an express agreement after the expiration of the term or completion of the undertaking, the rights and duties of the partners remain the same as they were at the expiration or completion, so far as is consistent with a partnership at will.

(2) If the partners or those of them who habitually acted in the business during the term or undertaking continue the business without any settlement

or liquidation of the partnership, they are presumed to have agreed that the business will not be wound up.

History: En. Sec. 23, Ch. 251, L. 1947; R.C.M. 1947, 63-306; amd. Sec. 31, Ch. 238, L. 1993.

Cross-References

Dissolution and winding up, Title 35, ch. 10, part 6.

35-10-407. Distributions in kind. A partner has no right to receive and may not be required to accept a distribution in kind.

History: En. Sec. 25, Ch. 238, L. 1993.

35-10-408. Partner's liability to partnership. A partner is liable to the partnership for a breach of the partnership agreement if there is a violation of a duty to the partnership that causes harm to the partnership.

History: En. Sec. 29, Ch. 238, L. 1993.

35-10-409. Remedies of partnership and partners. (1) A partnership may maintain an action against a partner for a breach of the partnership agreement or for the violation of a duty to the partnership that causes harm to the partnership.

(2) A partner may maintain an action against the partnership or another partner for legal or equitable relief, including an accounting as to partnership business, to enforce:

(a) a right under the partnership agreement;

(b) a right under this chapter, including the partner's:

(i) rights under 35-10-401 through 35-10-403 and 35-10-405;

(ii) right on dissociation to have the partner's interest in the partnership purchased pursuant to 35-10-619 or enforce any other right under 35-10-616 through 35-10-623; or

(iii) right to compel a dissolution and winding up of the partnership business under 35-10-624 or enforce any other right under 35-10-602, 35-10-609, and 35-10-624 through 35-10-629; or

(c) the rights and otherwise protect the interests of the partner, including rights and interests arising independent of the partnership relationship.

(3) The accrual of and any time limitation on a right of action for a remedy under this section is governed by other law. A right to an accounting upon a dissolution and winding up does not revive a claim barred by law.

History: En. Sec. 30, Ch. 238, L. 1993.

Part 5

Property Rights of a Partner

Part Cross-References

Partnership property, 35-10-203.

Conveyance of partnership's property, 35-10-302.

35-10-501 through 35-10-504. Repealed. Sec. 60, Ch. 238, L. 1993.

Compiler's Comments

Histories of Repealed Sections:

35-10-501. En. Sec. 24, Ch. 251, L. 1947; R.C.M. 1947, 63-401.

35-10-502. En. Sec. 25, Ch. 251, L. 1947; amd. Sec. 29, Ch. 535, L. 1975; R.C.M. 1947, 63-402.

35-10-503. En. Sec. 26, Ch. 251, L. 1947; R.C.M. 1947, 63-403.

35-10-504. En. Sec. 27, Ch. 251, L. 1947; R.C.M. 1947, 63-404.

35-10-505. Partner's transferable interest subject to charging order. (1) On application by a judgment creditor of a partner or partner's transferee, a court having jurisdiction may charge the transferable interest of the debtor partner or transferee to satisfy the judgment. The court may appoint a receiver of the debtor's share of the distributions due or to become due to the debtor in respect of the partnership and make all other orders, directions, accounts, and inquiries the debtor might have made or which the circumstances of the case may require.

(2) A charging order constitutes a lien on the judgment debtor's transferable interest in the partnership. The court may order a foreclosure of the interest subject to the charging order at any time and upon conditions it considers appropriate. The purchaser at the foreclosure sale has the rights of a transferee.

(3) At any time before foreclosure, an interest charged may be redeemed:

(a) by the judgment debtor;

(b) with property other than partnership property, by one or more of the other partners; or

(c) with partnership property, by one or more of the other partners with the consent of all the partners whose interests are not so charged.

(4) This chapter does not deprive a partner of a right under the exemption laws with respect to the partner's interest in the partnership.

(5) This section provides the exclusive remedy by which a judgment creditor of a partner or partner's transferee may satisfy a judgment out of the judgment debtor's transferable interest in the partnership.

History: En. Sec. 28, Ch. 251, L. 1947; R.C.M. 1947, 63-405; amd. Sec. 35, Ch. 238, L. 1993.

35-10-506. Partner's application to discharge attachment — undertaking. (1) If a writ of attachment is levied upon the interest in a partnership of one or more of the partners, the other partners who are not defendants in the action or any of them may, at any time before final judgment, apply to the judge who granted the writ or to the court, upon an affidavit showing the facts, for an order to discharge the attachment as to that interest.

(2) Upon such an application, the applicant shall give an undertaking, with at least two sufficient sureties, to the effect that they will pay to the sheriff, on demand, the amount of any judgment which may be recovered against the partner who is defendant in the action or which may be recovered against him in any other action in which the other partners are not defendants and in which a writ of attachment or an execution may come into the sheriff's hands at any time before the writ of attachment which was so levied is vacated and annulled, not exceeding the sum specified in the undertaking, which may not be less than the value of the interest of the defendant in the partnership as fixed by the court or judge. If, in the opinion of the court or judge, the value is uncertain, the sum must be such as the court or judge determines. For the purpose of fixing the sum or to determine the sufficiency of its sureties, the court or judge may receive affidavits or oral testimony or may direct a reference.

History: En. Secs. 921, 922, C. Civ. Proc. 1895; re-en. Secs. 6688, 6689, Rev. C. 1907; re-en. Secs. 9289, 9290, R.C.M. 1921; re-en. Secs. 9289, 9290, R.C.M. 1935; R.C.M. 1947, 93-4336, 93-4337; amd. Sec. 10, Ch. 202, L. 1979.

Cross-References

Prejudgment attachment, Title 27, ch. 18.

Restrictions on partner's authority as agent of partnership, 35-10-301.

35-10-507. Repealed. Sec. 60, Ch. 238, L. 1993.

History: En. Sec. 1219, C. Civ. Proc. 1895; re-en. Sec. 6822, Rev. C. 1907; re-en. Sec. 9425, R.C.M. 1921; re-en. Sec. 9425, R.C.M. 1935; amd. Sec. 11-165, Ch. 264, L. 1963; R.C.M. 1947, 93-5811.

35-10-508. Partner's interest in partnership property not transferable. A partner is not a co-owner of partnership property and has no interest in partnership property that can be transferred either voluntarily or involuntarily.

History: En. Sec. 32, Ch. 238, L. 1993.

35-10-509. Partner's transferable interest in partnership. The only transferable interest of a partner in the partnership is the partner's interest in distributions. The interest is personal property.

History: En. Sec. 33, Ch. 238, L. 1993.

35-10-510. Transfer of partner's transferable interest. (1) A transfer, in whole or in part, of a partner's transferable interest in the partnership:

(a) is permissible;

(b) does not by itself cause a dissolution and winding up of the partnership business; and

(c) does not, as against the other partners or the partnership, entitle the transferee, during the continuance of the partnership, to participate in the management or conduct of the partnership business, to require access to information concerning or an account of partnership transactions, or to inspect or copy the partnership books or records.

(2) A transferee of a partner's transferable interest in the partnership has a right:

(a) to receive, in accordance with the transfer, distributions to which the transferor would otherwise be entitled;

(b) to receive the net amount otherwise distributable to the transferor upon the dissolution and winding up of the partnership business; and

(c) to seek under 35-10-624(6) a judicial determination that it is equitable to wind up the partnership business.

(3) In a dissolution and winding up, a transferee is entitled to receive an accounting only from the date of the last account agreed to by all of the partners.

(4) Upon transfer, the transferor retains the rights and duties of a partner other than the interest in distributions transferred.

(5) Until receipt of notice of a transfer, a partnership has no duty to give effect to the transferee's rights under this section.

History: En. Sec. 34, Ch. 238, L. 1993.

Part 6
Dissolution and Winding Up

Part Cross-References

Dissolution and liquidation of business corporations, Title 35, ch. 1, part 9.

Dissolution and liquidation of nonprofit corporations, Title 35, ch. 2, part 7.

Involuntary corporate dissolution, Title 35, ch. 6.

Dissolution of limited partnerships, Title 35, ch. 12, part 12.

Sale or disposition of assets of cooperative associations, 35-15-506.

Sale or disposition of assets of cooperative agricultural marketing associations, 35-17-506.

Dissolution of rural cooperative utilities, 35-18-404, 35-18-405.

35-10-601. Repealed. Sec. 60, Ch. 238, L. 1993.

History: En. Sec. 29, Ch. 251, L. 1947; R.C.M. 1947, 63-501.

35-10-602. Partnership continues after dissolution. A partnership continues after dissolution until the winding up of its business is completed, at which time the partnership is terminated.

History: En. Sec. 30, Ch. 251, L. 1947; R.C.M. 1947, 63-502; amd. Sec. 46, Ch. 238, L. 1993.

35-10-603 through 35-10-608. Repealed. Sec. 60, Ch. 238, L. 1993.

Compiler's Comments

Histories of Repealed Sections:

35-10-603. En. Sec. 31, Ch. 251, L. 1947; R.C.M. 1947, 63-503.

35-10-604. En. Sec. 32, Ch. 251, L. 1947; amd. Sec. 14, Ch. 62, L. 1977; R.C.M. 1947, 63-504.

35-10-605. En. Sec. 33, Ch. 251, L. 1947; R.C.M. 1947, 63-505.

35-10-606. En. Sec. 34, Ch. 251, L. 1947; R.C.M. 1947, 63-506.

35-10-607. En. Sec. 35, Ch. 251, L. 1947; R.C.M. 1947, 63-507.

35-10-608. En. Sec. 36, Ch. 251, L. 1947; R.C.M. 1947, 63-508.

35-10-609. Right to wind up partnership business. (1) After dissolution, a partner who has not wrongfully dissociated may participate in winding up the partnership's business, but on application of any partner, partner's legal representative, or transferee, the district court, for good cause, may order judicial supervision of the winding up.

(2) The legal representative of the last surviving partner may wind up a partnership's business.

(3) A person winding up a partnership's business may preserve the partnership business or property as a going concern for a reasonable time; prosecute and defend actions and proceedings, whether civil, criminal, or administrative; settle and close the partnership's business; dispose of and transfer the partnership's property; discharge the partnership's liabilities; distribute the assets of the partnership pursuant to 35-10-629; settle disputes by mediation or arbitration; and perform other necessary acts.

History: En. Sec. 37, Ch. 251, L. 1947; R.C.M. 1947, 63-509; amd. Sec. 47, Ch. 238, L. 1993.

Cross-References

Uniform Arbitration Act, Title 27, ch. 5.

35-10-610 through 35-10-615. Repealed. Sec. 60, Ch. 238, L. 1993.

Compiler's Comments

Histories of Repealed Sections:

35-10-610. En. Sec. 38, Ch. 251, L. 1947; R.C.M. 1947, 63-510.

35-10-611. En. Sec. 39, Ch. 251, L. 1947; R.C.M. 1947, 63-511.

35-10-612. En. Sec. 40, Ch. 251, L. 1947; R.C.M. 1947, 63-512.

35-10-613. En. Sec. 41, Ch. 251, L. 1947; R.C.M. 1947, 63-513.

35-10-614. En. Sec. 42, Ch. 251, L. 1947; R.C.M. 1947, 63-514.

35-10-615. En. Sec. 43, Ch. 251, L. 1947; R.C.M. 1947, 63-515.

35-10-616. Events causing partner's dissociation. A partner is dissociated from a partnership upon:

(1) receipt by the partnership of notice of the partner's express will to withdraw as a partner or upon any later date specified in the notice;

(2) an event agreed to in the partnership agreement as causing the partner's dissociation;

(3) the partner's expulsion pursuant to the partnership agreement;

(4) the partner's expulsion by the unanimous vote of the other partners if:

(a) it is unlawful to carry on the partnership business with that partner;

(b) there has been a transfer of all or substantially all of that partner's transferable interest in the partnership, other than a transfer for security purposes or a court order charging the partner's interest that has not been foreclosed;

(c) within 90 days after the partnership notifies a corporate partner that it will be expelled because it has filed a certificate of dissolution or the equivalent, its charter has been revoked, or its right to conduct business has been suspended by the jurisdiction of its incorporation, there is no revocation of the certificate of dissolution or no reinstatement of its charter or its right to conduct business; or

(d) a partnership that is a partner has been dissolved and its business is being wound up;

(5) the partner's expulsion by judicial decree, made on application by the partnership or another partner, because:

(a) the partner engaged in wrongful conduct that adversely and materially affected the partnership business;

(b) the partner willfully or persistently committed a material breach of the partnership agreement or of a duty owed to the partnership or the other partners under 35-10-405; or

(c) the partner engaged in conduct relating to the partnership business that made it not reasonably practicable to carry on the business in partnership with that partner;

(6) the partner:

(a) becoming a debtor in bankruptcy;

(b) executing an assignment for the benefit of creditors;

(c) seeking, consenting to, or acquiescing in the appointment of a trustee, receiver, or liquidator of that partner or of all or substantially all of that partner's property; or

(d) failing within 90 days after the appointment to have vacated or stayed the appointment of a trustee, receiver, or liquidator of the partner or of all or substantially all of the partner's property obtained without the partner's consent or acquiescence or failing within 90 days after the expiration of a stay to have the appointment vacated;

(7) in the case of a partner who is an individual:

(a) the partner's death;

(b) the appointment of a guardian or general conservator for the partner; or

(c) a judicial determination that the partner has otherwise become incapable of performing the partner's duties under the partnership agreement;

(8) in the case of a partner that is a trust or is acting as a partner by virtue of being a trustee of a trust, distribution of the trust's entire transferable interest in the partnership, but not merely by reason of the substitution of a successor trustee;

(9) in the case of a partner that is an estate or is acting as a partner by virtue of being a personal representative of an estate, distribution of the estate's entire transferable interest in the partnership, but not merely by reason of the substitution of a successor personal representative; or

(10) termination of a partner who is not an individual, partnership, corporation, trust, or estate.

History: **En. Sec. 36, Ch. 238, L. 1993.**

Cross-References

Uniform Probate Code — general provisions, Title 72, ch. 1.

Trust Code — general provisions, Title 72, ch. 33.

35-10-617. Partner's wrongful dissociation. (1) A partner's dissociation is wrongful only if:

(a) it is in breach of an express provision of the partnership agreement; or

(b) in the case of a partnership for a definite term or particular undertaking, before the expiration of the term or the completion of the undertaking:

(i) the partner withdraws by express will, unless the withdrawal follows the dissociation of another partner and results in a right to dissolve the partnership under 35-10-624(2)(a);

(ii) the partner is expelled by judicial decree under 35-10-616(5); or

(iii) a partner, who is not an individual, a trust other than a business trust, or an estate, is expelled or otherwise dissociated because the entity willfully dissolved or terminated.

(2) A partner who wrongfully dissociates is liable to the partnership and to the other partners for damages caused by the dissociation. That liability is in addition to any other liability of the partner to the partnership or to the other partners.

History: **En. Sec. 37, Ch. 238, L. 1993.**

35-10-618. Effect of partner's dissociation. (1) If a partner's dissociation results in a dissolution and winding up of the partnership business, 35-10-602, 35-10-609, and 35-10-624 through 35-10-629 apply; otherwise 35-10-619 through 35-10-623 apply.

(2) Upon a partner's dissociation:

(a) the partner's right to participate in the management and conduct of the partnership business terminates, except as provided in 35-10-609;

(b) the partner's duty of loyalty under 35-10-405(2)(c) terminates; and

(c) the partner's duty of loyalty under 35-10-405(2)(a) and (2)(b) and duty of care under 35-10-405(4) continue only with regard to matters arising or events occurring before the dissociation.

History: **En. Sec. 38, Ch. 238, L. 1993.**

35-10-619. Purchase of dissociated partner's interest. (1) If a partner is dissociated from a partnership without resulting in a dissolution and winding up of the partnership business under 35-10-624, the partnership shall cause the dissociated partner's interest in the partnership to be purchased for a buyout price determined pursuant to subsection (2).

(2) (a) The buyout price of a dissociated partner's interest is the amount that would have been distributable to the dissociating partner under 35-10-629(2) if on the date of dissociation the assets of the partnership were sold at a price equal to the greater of:

(i) the liquidation value; or

(ii) the value based on a sale of the entire business as a going concern without the dissociated partner and the partnership were wound up as of that date.

(b) In either case, the selling price of the partnership assets must be determined on the basis of the amount that would be paid by a willing buyer to a willing seller, neither being under any compulsion to buy or sell, and with knowledge of all relevant facts. Interest must be paid from the date of dissociation to the date of payment.

(3) Damages for wrongful dissociation under 35-10-617(2) and all other amounts owing, whether or not presently due, from the dissociated partner to the partnership must be offset against the buyout price. Interest must be paid from the date the amount owed becomes due to the date of payment.

(4) A partnership shall indemnify a dissociated partner against all partnership liabilities incurred before the dissociation, except liabilities then unknown to the partnership, and against all partnership liabilities incurred after the dissociation, except liabilities incurred by an act of the dissociated partner under 35-10-620. For purposes of this subsection, a liability not known to a partner other than the dissociated partner is not known to the partnership.

(5) If no agreement for the purchase of a dissociated partner's interest is reached within 120 days after a written demand for payment, the partnership shall pay or cause to be paid in cash to the dissociated partner the amount the partnership estimates to be the buyout price and accrued interest, reduced by any offsets and accrued interest under subsection (3).

(6) If a deferred payment is authorized under subsection (8), the partnership may tender a written offer to pay the amount it estimates to be the buyout price and accrued interest, reduced by any offsets under subsection (3), stating the time of payment, the amount and type of security for payment, and the other terms and conditions of the obligation.

(7) The payment or tender required by subsection (5) or (6) must be accompanied by the following:

(a) a statement of partnership assets and liabilities as of the date of dissociation;

(b) the latest available partnership balance sheet and income statement, if any;

(c) an explanation of how the estimated amount of the payment was calculated; and

(d) written notice that the payment is in full satisfaction of the obligation to purchase unless, within 120 days after the written notice, the dissociated partner commences an action to determine the buyout price, any offsets under subsection (3), or other terms of the obligation to purchase.

(8) A partner who wrongfully dissociates before the expiration of a definite term or the completion of a particular undertaking is not entitled to payment of any portion of the buyout price until the expiration of the term or completion of the undertaking unless the partner establishes to the satisfaction of the court that earlier payment will not cause undue hardship to the business of the partnership. A deferred payment must be adequately secured and bear interest.

(9) A dissociated partner may maintain an action against the partnership, pursuant to 35-10-409(2)(b)(ii), to determine the buyout price of that partner's interest, any offsets under subsection (3), or other terms of the obligation to purchase. The action must be commenced within 120 days after the partnership has tendered payment or an offer to pay or within 1 year after written demand for payment if no payment or offer to pay is tendered. The court shall determine the buyout price of the dissociated partner's interest, any offset due under subsection (3), and accrued interest, and enter judgment for any additional payment or refund. If deferred payment is authorized under subsection (8), the court shall also determine the security for payment and other terms of the obligation to purchase. The court may assess reasonable attorney fees and the fees and expenses of appraisers or other experts for a party to the action, in amounts the court finds equitable, against a party that the court finds acted arbitrarily, vexatiously, or not in good faith. The finding may be based on the partnership's failure to tender payment or an offer to pay or to comply with the requirements of subsection (7).

History: En. Sec. 39, Ch. 238, L. 1993.

35-10-620. Dissociated partner's power to bind partnership — liability to partnership. (1) For 2 years after a partner dissociates without resulting in a dissolution and winding up of the partnership business, the partnership, including a surviving partnership under 35-10-635 through 35-10-637 and 35-10-641 through 35-10-644, is bound by an act of the dissociated partner that would have bound the partnership under 35-10-301 before dissociation if the other party to the transaction:

(a) reasonably believed when entering the transaction that the dissociated partner was a partner at that time;

(b) did not have notice of the partner's dissociation; and

(c) is not considered to have had knowledge under 35-10-310(5) or notice under 35-10-622.

(2) A dissociated partner is liable to the partnership for any loss caused to the partnership arising from an obligation incurred by the dissociated partner after dissociation and for which the partnership is liable under subsection (1).

History: En. Sec. 40, Ch. 238, L. 1993.

35-10-621. Dissociated partner's liability to other persons. (1) A partner's dissociation does not of itself discharge the partner's liability for a partnership obligation incurred before dissociation. A dissociated partner is not liable for a partnership obligation incurred after dissociation except as provided in subsection (2).

(2) A partner who dissociates without resulting in a dissolution and winding up of the partnership business is personally liable as a partner to the other party as the result of a partnership obligation incurred in connection with a transaction entered into by the partnership or a surviving partnership under

35-10-635 through 35-10-637 and 35-10-641 through 35-10-644 within 2 years after the partner's dissociation only if the other party to the transaction:

(a) reasonably believed when entering the transaction that the dissociated partner was a partner at that time;

(b) did not have notice of the partner's dissociation;

(c) is not considered to have had knowledge under 35-10-310(5) or notice under 35-10-622; and

(d) the obligation is one for which the partner would be personally liable under 35-10-307 or 35-10-629 if the partner had not dissociated.

(3) By agreement with the partnership creditor and the partners continuing the business, a dissociated partner may be released from liability for a partnership obligation.

(4) A dissociated partner is released from liability for a partnership obligation if a partnership creditor, with notice of the partner's dissociation but without the partner's consent, agrees to a material alteration in the nature or time of payment of a partnership obligation.

History: En. Sec. 41, Ch. 238, L. 1993; amd. Sec. 13, Ch. 449, L. 1995.

35-10-622. Statement of dissociation. (1) A dissociated partner or the partnership may file a statement of dissociation stating the name of the partnership and that the partner is dissociated from the partnership.

(2) A statement of dissociation is a limitation on the authority of a dissociated partner for the purposes of 35-10-310(4) and (5).

(3) For the purposes of 35-10-301, 35-10-620, and 35-10-621(2), a person not a partner is considered to have notice of the dissociation 90 days after the statement of dissociation is filed.

History: En. Sec. 42, Ch. 238, L. 1993.

35-10-623. Continued use of partnership name. Continued use of a partnership name or a dissociated partner's name as part of the partnership by the partners continuing the business does not of itself make the dissociated partner liable for an obligation of the partners or the partnership continuing the business.

History: En. Sec. 43, Ch. 238, L. 1993.

35-10-624. Events causing dissolution and winding up of partnership business. Except as provided in 35-10-625, a partnership is dissolved and its business must be wound up only upon:

(1) receipt by a partnership at will of notice from a partner, other than a partner who is dissociated under 35-10-616(2) through (10), of that partner's express will to withdraw as a partner or upon any later date specified in the notice;

(2) in a partnership for a definite term or particular undertaking:

(a) within 90 days after a partner's wrongful dissociation under 35-10-617 or a partner's dissociation by death or otherwise under 35-10-616(6) through (10), receipt by the partnership of notice from another partner of that partner's express will to withdraw as a partner;

(b) the express will of all the partners; or

(c) the expiration of the term or the completion of the undertaking unless all the partners agree to continue the business, in which case the partnership agreement is considered amended retroactively to provide that the expiration or completion does not result in the dissolution and winding up of the partnership business;

(3) an event agreed to in the partnership agreement resulting in the winding up of the partnership business unless all the partners agree to continue the business, in which case the partnership agreement is considered amended retroactively to provide that the event does not result in the dissolution and winding up of the partnership business;

(4) an event that makes it unlawful for all or substantially all of the business of the partnership to be continued, but a cure of illegality within 90 days after notice to the partnership of the event is effective retroactively to the date of the event for purposes of this section;

(5) a judicial decree, issued upon application by a partner, that:

(a) the economic purpose of the partnership is likely to be unreasonably frustrated;

(b) another partner has engaged in conduct relating to the partnership business that makes it not reasonably practicable to carry on the business in partnership with that partner; or

(c) it is not otherwise reasonably practicable to carry on the partnership business in conformity with the partnership agreement; or

(6) a judicial decree, issued upon application by a transferee of a partner's transferable interest, that it is equitable to wind up the partnership business:

(a) if the partnership was for a definite term or particular undertaking at the time of the transfer or entry of the charging order that gave rise to the transfer, after the expiration of the term or completion of the undertaking; or

(b) if the partnership was a partnership at will at the time of the transfer or entry of the charging order that gave rise to the transfer, at any time.

History: En. Sec. 44, Ch. 238, L. 1993.

35-10-625. Dissolution deferred ninety days. (1) Except as provided in subsection (2), a partnership of more than two persons is not dissolved until 90 days after receipt by the partnership of notice from a partner under 35-10-624(1) or (2)(a), and its business may be continued until that date as if no notice were received. Before that date, the partner who gave the notice may waive the right to have the partnership business wound up. If there is no waiver before that date, the partnership is dissolved and its business must be wound up.

(2) A partnership may be dissolved at any time during the 90-day period and its business wound up, by the express will of at least half of the other partners.

(3) After receipt by the partnership of notice from a partner under 35-10-624(1) or (2)(a), the partner who gave the notice:

(a) has no rights in the management and conduct of the partnership business if it is continued under subsection (1) but may participate in winding up the business under 35-10-609 if the partnership is dissolved on or before the expiration of the 90-day period pursuant to subsection (1) or (2);

(b) is liable for obligations incurred during the period only to the extent a dissociated partner would be liable under 35-10-620(2) or 35-10-621(2) but is not liable for contributions for and must be indemnified by the other partners against any partnership liability incurred by another partner to the extent the liability is not appropriate for winding up the partnership business; and

(c) must be credited with the partner's share of any profit earned during the period and may be charged with the partner's share of any loss incurred during the period but only to the extent of profits credited for the period.

History: **En. Sec. 45, Ch. 238, L. 1993.**

35-10-626. Partner's power to bind partnership after dissolution. Subject to 35-10-627, a partnership is bound by a partner's act after dissolution that:

(1) is appropriate for winding up the partnership business; or

(2) would have bound the partnership under 35-10-301 before dissolution if the other party to the transaction did not have notice of the dissolution.

History: **En. Sec. 48, Ch. 238, L. 1993.**

35-10-627. Statement of dissolution. (1) After dissolution, a partner who has not wrongfully dissociated may file a statement of dissolution stating the name of the partnership and that the partnership has dissolved and is winding up its business.

(2) A statement of dissolution cancels a filed statement of partnership authority for the purposes of 35-10-310(4) and is a limitation on authority for the purposes of 35-10-310(5).

(3) For the purposes of 35-10-301 and 35-10-626, a person not a partner is considered to have notice of the dissolution and the limitation on the partners' authority as a result of the statement of dissolution 90 days after it is filed.

(4) After filing and, if appropriate, recording a statement of dissolution, the dissolved partnership may file and, if appropriate, record a statement of partnership authority that will operate with respect to a person not a partner as provided in 35-10-310(4) and (5) in any transaction, whether or not the transaction is appropriate for winding up the partnership business.

History: **En. Sec. 49, Ch. 238, L. 1993.**

35-10-628. Partner's liability to other partners after dissolution. (1) Except as provided in 35-10-625(3)(b) and subsection (2) of this section, after dissolution a partner is liable to the other partners for the partner's share of any partnership liability incurred under 35-10-626 for which the partner is personally liable under 35-10-307 or 35-10-621.

(2) A partner who, with knowledge of the winding up, incurs a partnership liability under 35-10-626(2) by an act that is not appropriate for winding up the partnership business is liable to the partnership for any loss caused to the partnership arising from the liability.

History: **En. Sec. 50, Ch. 238, L. 1993; amd. Sec. 14, Ch. 449, L. 1995.**

35-10-629. Settlement of accounts among partners. (1) In winding up a partnership's business, the assets of the partnership must be applied to discharge its obligations to creditors, including partners who are creditors. Any surplus must be applied to pay in cash the net amount distributable to partners in accordance with their right to distributions pursuant to subsection (2).

(2) Each partner is entitled to a settlement of all partnership accounts upon winding up the partnership business. In settling accounts among the partners, the profits and losses that result from the liquidation of the

partnership assets must be credited and charged to the partners' accounts. The partnership shall make a distribution to a partner in an amount equal to that partner's positive account balance. A partner shall contribute to the partnership an amount equal to that partner's negative balance but only to the extent that the negative balance is attributable to debts, obligations, or liabilities for which the partner is personally liable under 35-10-307.

(3) To the extent not taken into account in settling the accounts among partners pursuant to subsection (2), each partner shall contribute, in the proportion in which the partner shares partnership losses and to the extent the partner is personally liable under 35-10-307, the amount necessary to satisfy partnership obligations. If a partner fails or is not obligated to contribute, the other partners shall contribute, in the proportions in which the partners share partnership losses, the additional amount necessary to satisfy the partnership obligations. A partner or a partner's legal representative may recover from the other partners any contributions the partner makes to the extent the amount contributed exceeds that partner's share of the partnership obligations but only to the extent the contributions are made because of obligations for which the other partners are personally liable under 35-10-307.

(4) The estate of a deceased partner is liable for the partner's obligation to contribute to the partnership under subsections (2) and (3).

(5) An assignee for the benefit of creditors of a partnership or a partner or a person appointed by a court to represent creditors of a partnership or a partner may enforce a partner's obligation to contribute to the partnership under subsections (2) and (3).

History: En. Sec. 51, Ch. 238, L. 1993; amd. Sec. 15, Ch. 449, L. 1995.

35-10-630 through 35-10-634 reserved.

35-10-635. Conversion of partnership to limited partnership. (1) A partnership may be converted to a limited partnership pursuant to this section.

(2) The terms and conditions of a conversion of a partnership to a limited partnership must be approved by all the partners or by a number or percentage specified for conversion in the partnership agreement.

(3) After the conversion is approved by the partners, the partnership shall file a certificate of limited partnership that satisfies the requirements of 35-12-601 and includes:

(a) a statement that the partnership was converted to a limited partnership from a partnership;

(b) its former name; and

(c) a statement of the number of votes cast by the partners for and against the conversion and, if the vote is less than unanimous, the number or percentage required to approve the conversion under the partnership agreement.

(4) The conversion takes effect when the certificate of limited partnership is filed or at any later date specified in the certificate.

(5) A partner who becomes a limited partner as a result of the conversion remains liable as a partner for an obligation, incurred by the partnership before the conversion takes effect, for which the partner is personally liable under 35-10-307 and 35-10-629. If the other party to a transaction with the limited

partnership reasonably believes when entering the transaction that the limited partner is a general partner, the partner is liable for an obligation incurred by the limited partnership within 90 days after the conversion takes effect but only to the extent that the limited partner would have been personally liable for the partnership under 35-10-307 or 35-10-629 immediately prior to the conversion. The partner's liability for all other obligations of the limited partnership incurred after the conversion takes effect is that of a limited partner as provided in Title 35, chapter 12.

History: En. Sec. 52, Ch. 238, L. 1993; amd. Sec. 16, Ch. 449, L. 1995.

35-10-636. Conversion of limited partnership to partnership. (1) A limited partnership may be converted to a partnership pursuant to this section.

(2) Notwithstanding a provision to the contrary in a limited partnership agreement, the terms and conditions of a conversion of a limited partnership to a partnership must be approved by all the partners.

(3) After the conversion is approved by the partners, the limited partnership shall cancel its certificate of limited partnership pursuant to 35-12-603.

(4) The conversion takes effect when the certificate of limited partnership is canceled.

(5) A limited partner who becomes a partner as a result of the conversion remains liable only as a limited partner for an obligation incurred by the limited partnership before the conversion takes effect. The limited partner is liable as a partner for an obligation of the partnership for which the partner is personally liable under 35-10-307 or 35-10-629 and which arises or is incurred after the conversion takes effect.

History: En. Sec. 53, Ch. 238, L. 1993; amd. Sec. 17, Ch. 449, L. 1995.

35-10-637. Effect of conversion — entity unchanged. (1) A partnership or limited partnership that has been converted pursuant to 35-10-635 or 35-10-636 is for all purposes the same entity that existed before the conversion.

(2) When a conversion takes effect:

(a) all property owned by the converting partnership or limited partnership remains vested in the converted entity;

(b) all obligations of the converting partnership or limited partnership continue as obligations of the converted entity; and

(c) an action or proceeding pending against the converting partnership or limited partnership may be continued as if the conversion had not occurred.

History: En. Sec. 54, Ch. 238, L. 1993.

35-10-638 through 35-10-640 reserved.

35-10-641. Merger of partnerships. (1) Pursuant to a plan of merger approved as provided in subsection (3), a partnership may be merged with one or more partnerships or limited partnerships.

(2) The plan of merger must set forth:

(a) the name of each partnership or limited partnership that is a party to the merger;

(b) the name of the surviving entity into which the other partnerships or limited partnerships will merge;

(c) whether the surviving entity is a partnership or a limited partnership and the status of each partner;

(d) the terms and conditions of the merger;

(e) the manner and basis of converting the interests of each party to the merger into interests or obligations of the surviving entity or into money or other property in whole or part; and

(f) the street address of the surviving entity's chief executive office.

(3) The plan of merger must be approved:

(a) in the case of a partnership that is a party to the merger, by all the partners or a number or percentage specified for merger in the partnership agreement; and

(b) in the case of a limited partnership that is a party to the merger, by the vote required for approval of a merger by the law of the state or foreign jurisdiction in which the limited partnership is organized and, in the absence of such specifically applicable law, by all the partners, notwithstanding a provision to the contrary in the partnership agreement.

(4) After a plan of merger is approved and before the merger takes effect, the plan may be amended or abandoned as provided in the plan.

(5) The merger takes effect on the latest of:

(a) the approval of the plan of merger by all parties to the merger, as provided in subsection (3);

(b) the filing of all documents required by law to be filed as a condition to the effectiveness of the merger; or

(c) any effective date specified in the plan of merger.

History: En. Sec. 55, Ch. 238, L. 1993.

35-10-642. Effect of merger. (1) When a merger takes effect:

(a) every partnership or limited partnership that is a party to the merger other than the surviving entity ceases to exist;

(b) all property owned by each of the merged partnerships or limited partnerships vests in the surviving entity;

(c) all obligations of every partnership or limited partnership that is a party to the merger become the obligations of the surviving entity; and

(d) an action or proceeding pending against a partnership or limited partnership that is a party to the merger may be continued as if the merger had not occurred or the surviving entity may be substituted as a party to the action or proceeding.

(2) The secretary of state is the agent for service of process in an action or proceeding against a surviving foreign partnership or limited partnership to enforce an obligation of a domestic partnership or limited partnership that is a party to a merger. The surviving entity shall promptly notify the secretary of state of the mailing address of its chief executive office and of any change of address. Upon receipt of process, the secretary of state shall mail a copy of the process to the surviving foreign partnership or limited partnership.

(3) A partner of the surviving partnership or limited partnership is liable for:

(a) all obligations of a party to the merger for which the partner was personally liable before the merger;

(b) all other obligations of the surviving entity incurred before the merger by a party to the merger, but those obligations may be satisfied only out of property of that entity; and

(c) all obligations of the surviving entity incurred after the merger takes effect.

(4) If the obligations incurred before the merger by a party to the merger are not satisfied out of the property of the surviving partnership or limited partnership, the partners of that party immediately before the effective date of the merger shall contribute the amount necessary to satisfy that party's obligations to the surviving entity in the manner provided in 35-10-629(3) as if the merged party were dissolved.

(5) A partner of a party to a merger who does not become a partner of the surviving partnership or limited partnership is dissociated from the entity, of which that partner was a partner, as of the date the merger takes effect. The surviving entity shall cause the partner's interest in the entity to be purchased under 35-10-619. The surviving entity is bound under 35-10-620 by an act of a partner dissociated under this subsection, and the partner is liable under 35-10-621 for transactions entered into by the surviving entity after the merger takes effect.

History: **En. Sec. 56, Ch. 238, L. 1993.**

35-10-643. Statement of merger. (1) After a merger, the surviving partnership or limited partnership may file a statement that one or more partnerships or limited partnerships have merged into the surviving entity.

(2) A statement of merger must contain:

(a) the name of each partnership or limited partnership that is a party to the merger;

(b) the name of the surviving entity into which the other partnerships or limited partnerships were merged;

(c) the street address of the surviving entity's chief executive office and of an office in this state, if any; and

(d) whether the surviving entity is a partnership or limited partnership.

(3) Except as provided in subsection (4), for the purposes of 35-10-302, property of the surviving partnership or limited partnership that before the merger was held in the name of another party to the merger is property held in the name of the surviving entity upon filing a statement of merger.

(4) For the purposes of 35-10-302, real property of the surviving partnership or limited partnership that before the merger was held in the name of another party to the merger is property held in the name of the surviving entity upon recording a certified copy of the statement of merger in the office for recording transfers of that real property.

(5) A filed and, if appropriate, recorded statement of merger that is executed and declared to be accurate pursuant to 35-10-111, that states the name of a partnership or limited partnership that is a party to the merger in whose name property was held before the merger, and that states the name of the surviving entity but that does not contain all of the other information required by subsection (2) operates with respect to the partnerships or limited partnerships named to the extent provided in subsections (3) and (4).

History: **En. Sec. 57, Ch. 238, L. 1993.**

35-10-644. Nonexclusive. Sections 35-10-635 through 35-10-637 and 35-10-641 through 35-10-643 are not exclusive. Partnerships or limited partnerships may be converted or merged in any other manner provided by law.

History: En. Sec. 58, Ch. 238, L. 1993.

Part 7

Registration of Limited Liability Partnerships

35-10-701. Registration of limited liability partnerships. (1) To become a limited liability partnership, a partnership shall file with the secretary of state an application for registration of an assumed business name, on a form furnished by the secretary of state, that indicates an intention to register as a limited liability partnership under this section. The registration of a limited liability partnership under this section is subject to all of the terms and conditions otherwise applicable to the registration of an assumed business name pursuant to Title 30, chapter 13, part 2.

(2) The application for registration of an assumed business name must be executed by one or more partners authorized to execute the application and registration.

(3) The secretary of state shall register as a limited liability partnership any partnership that substantially complies with Title 30, chapter 13, part 2, and this section.

(4) A partnership's registration under this section is effective when the secretary of state files the partnership's application for registration of an assumed business name under subsection (1) and remains in effect until it is canceled by the secretary of state pursuant to Title 30, chapter 13, part 2.

(5) The fact that an application for registration of an assumed business name under this section or any renewals of the assumed business name is on file with the office of the secretary of state is notice that the partnership is a limited liability partnership and is notice of all other facts set forth in the application.

(6) The secretary of state shall provide necessary forms for the registration of a limited liability partnership under subsection (1) or any renewals of registration.

History: En. Sec. 18, Ch. 449, L. 1995.

Cross-References

License fee for limited liability partnership, 30-13-217.

35-10-702. Effect of registration — entity unchanged. (1) A partnership that has registered under 35-10-701 is for all purposes of the laws of this state, including but not limited to all licensing laws, whether for professionals or otherwise, the same entity that existed before the registration.

(2) When registration of a partnership under 35-10-701 takes effect:

(a) all tangible and intangible property, whether real or personal, owned by the partnership remains vested in the partnership;

(b) all debts, obligations, or liabilities of and chargeable to the partnership continue as debts, obligations, or liabilities of the partnership; and

(c) any actions or proceedings pending by or against the partnership may be continued as if the registration under 35-10-701 had not occurred.

(3) If a partnership dissolves and its business continues without liquidation of the partnership affairs, the registration of the limited liability partnership must be considered continued and must continue to be applicable to the partnership continuing the business. The partnership continuing the business is considered to have filed any documents required or permitted under this section that were filed by the dissolved partnership. The partnership continuing the business shall renew its registration at the time the dissolved partnership would have been required to file an application for renewal pursuant to Title 30, chapter 13, part 2.

(4) If a partnership dissolves, winds up its affairs, and liquidates, the registration of the limited liability partnership must be considered continued and must remain in effect as to the partnership and the partners during the period of dissolution, winding up, and liquidation and as to the partners subsequent to dissolution, winding up, and liquidation as to debts, obligations, or liabilities for which a partner was not personally liable under 35-10-307 or 35-10-629.

History: En. Sec. 19, Ch. 449, L. 1995.

35-10-703. Name of limited liability partnerships. The name of a limited liability partnership must contain the words "limited liability partnership", the abbreviation "l.l.p." or "llp", or other words or abbreviations that may be required or authorized by the laws of the state in which the partnership is formed, including without limitation "professional limited liability partnership" or the abbreviation "p.l.l.p." or "pllp".

History: En. Sec. 20, Ch. 449, L. 1995.

35-10-704 through 35-10-709 reserved.

35-10-710. Applicability to foreign or interstate commerce. (1) A partnership formed pursuant to an agreement governed by this chapter may conduct its business, carry on its operations, and have and exercise the powers granted by this chapter in any state, territory, district, or possession of the United States or in any foreign country.

(2) It is the intent of the legislature that the legal existence of partnerships formed pursuant to an agreement governed by this chapter must be recognized outside the boundaries of this state and that the laws of this state governing a partnership transacting business outside this state be granted the protection of full faith and credit under the United States constitution.

(3) Notwithstanding 35-10-116, the internal affairs of partnerships formed pursuant to an agreement governed by this chapter, including the personal liability of partners for debts, obligations, and liabilities of or chargeable to the partnership or another partner, are subject to and governed by the laws of this state.

(4) Before transacting business in this state as a limited liability partnership, a partnership formed pursuant to an agreement governed by the laws of any state or jurisdiction other than this state shall:

(a) comply with any statutory or administrative registration or filing requirements governing the specific type of business in which the partnership is engaged; and

(b) register under 35-10-701. If registered, the partnership appoints the secretary of state as its agent for service of process with respect to causes of action arising out of the transaction of business in this state.

(5) Notwithstanding 35-10-116, the internal affairs of partnerships formed pursuant to an agreement governed by the laws of any state or jurisdiction other than this state, including the liability of partners for debts, obligations, and liabilities of or chargeable to the partnership or another partner, are subject to and governed by the laws of the jurisdiction in which the partnership is formed.

History: En. Sec. 21, Ch. 449, L. 1995.

CHAPTER 11

PARTNERSHIP — USE OF FICTITIOUS NAME

Part 1 — Provisions Relating to Partnerships (Repealed. Sec. 18, Ch. 260, L. 1979)

Part 2 — Provisions Relating to County Clerk

35-11-201. Register of names to be kept by county clerk.
35-11-202. Certified copies of register and proof of publication to be evidence.

Chapter Cross-References

Assumed business names, Title 30, ch. 13, part 2.

Part 1

Provisions Relating to Partnerships (Repealed. Sec. 18, Ch. 260, L. 1979)

Part Compiler's Comments

Histories of Repealed Sections:

35-11-101. En. Sec. 3280, Civ. C. 1895; re-en. Sec. 5504, Rev. C. 1907; re-en. Sec. 8019, R.C.M. 1921; Cal. Civ. C. Sec. 2466; re-en. Sec. 8019, R.C.M 1935; amd. Sec. 2, Ch. 111, L. 1969; R.C.M. 1947, 63-601.

35-11-102. En. Sec. 3281, Civ. C. 1895; re-en. Sec. 5505, Rev. C. 1907; re-en. Sec. 8020, R.C.M. 1921; Cal. Civ. C. Sec. 2468; re-en. Sec. 8020, R.C.M 1935; R.C.M. 1947, 63-602(part).

35-11-103. En. Sec. 3282, Civ. C. 1895; re-en. Sec. 5506, Rev. C. 1907; re-en. Sec. 8021, R.C.M. 1921; Cal. Civ. C. Sec. 2469; re-en. Sec. 8021, R.C.M 1935; amd. Sec. 3, Ch. 111, L. 1969; R.C.M. 1947, 63-603.

Part 2

Provisions Relating to County Clerk

35-11-201. Register of names to be kept by county clerk. Every county clerk must keep a register of the names of firms and persons mentioned in the certificates filed with him, pursuant to 35-11-101 through 35-11-103 prior to repeal by section 18, Chapter 260, Laws of 1979, entering in alphabetical order the name of every such partnership and of each partner therein.

History: En. Sec. 3283, Civ. C. 1895; re-en. Sec. 5507, Rev. C. 1907; re-en. Sec. 8022, R.C.M. 1921; Cal. Civ. C. Sec. 2470; Field Civ. C. Sec. 1326; re-en. Sec. 8022, R.C.M. 1935; R.C.M. 1947, 63-604; amd. Sec. 155, Ch. 575, L. 1981.

35-11-202. Certified copies of register and proof of publication to be evidence. Copies of the entries of a county clerk, when certified by him and affidavits of publication pursuant to 35-11-101 through 35-11-103 prior to repeal by section 18, Chapter 260, Laws of 1979, made by the printer, publisher, or chief clerk of a newspaper are presumptive evidence of the facts therein stated.

History: En. Sec. 3284, Civ. C. 1895; re-en. Sec. 5508, Rev. C. 1907; re-en. Sec. 8023, R.C.M. 1921; Cal. Civ. C. Sec. 2471; Field Civ. C. Sec. 1327; re-en. Sec. 8023, R.C.M. 1935; R.C.M. 1947, 63-605; amd. Sec. 156, Ch. 575, L. 1981.

CHAPTER 12

LIMITED PARTNERSHIPS

Part 1 — General
(Repealed. Sec. 64, Ch. 522, L. 1981)

Part 2 — Formation—Certificate
(Repealed. Sec. 64, Ch. 522, L. 1981)

Part 3 — Powers, Duties, and Liabilities of Partners
(Repealed. Sec. 64, Ch. 522, L. 1981)

Part 4 — Dissolution
(Repealed. Sec. 64, Ch. 522, L. 1981)

Part 5 — General Provisions

35-12-501. Short title.
35-12-502. Construction and application.
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35-12-504. Definitions.
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35-12-1003. Withdrawal of limited partner.
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35-12-1401. Right of action.
35-12-1402. Proper plaintiff.
35-12-1403. Pleading.
35-12-1404. Expenses.

Chapter Cross-References

Applicability of partnership law, 35-10-201.

Part 1

General (Repealed. Sec. 64, Ch. 522, L. 1981)

Part Compiler's Comments

Histories of Repealed Sections:

35-12-101. En. Sec. 27, Ch. 252, L. 1947; R.C.M. 1947, 63-908.

35-12-102. En. Sec. 1, Ch. 252, L. 1947; R.C.M. 1947, 63-701.

35-12-103. En. Sec. 3, Ch. 252, L. 1947; R.C.M. 1947, 63-703.

35-12-104. En. Sec. 30, Ch. 252, L. 1947; R.C.M. 1947, 63-911.

35-12-105. En. Sec. 28, Ch. 252, L. 1947; R.C.M. 1947, 63-909.

35-12-106. En. Sec. 29, Ch. 252, L. 1947; R.C.M. 1947, 63-910.

Part 2

Formation — Certificate (Repealed. Sec. 64, Ch. 522, L. 1981)

Part Compiler's Comments

Histories of Repealed Sections:

35-12-201. En. Sec. 2, Ch. 252, L. 1947; amd. Sec. 1, Ch. 111, L. 1969; amd. Sec. 15, Ch. 62, L. 1977; R.C.M. 1947, 63-702.

35-12-202. En. Sec. 6, Ch. 252, L. 1947; R.C.M. 1947, 63-706.

35-12-203. En. Sec. 24, Ch. 252, L. 1947; amd. Sec. 18, Ch. 62, L. 1977; R.C.M. 1947, 63-905.

35-12-204. En. Sec. 25, Ch. 252, L. 1947; amd. Sec. 4, Ch. 111, L. 1969; R.C.M. 1947, 63-906.

35-12-205. En. Sec. 5, Ch. 252, L. 1947; R.C.M. 1947, 63-705.

35-12-206. En. Sec. 4, Ch. 252, L. 1947; R.C.M. 1947, 63-704.

35-12-207. En. Sec. 8, Ch. 252, L. 1947; R.C.M. 1947, 63-802.

Part 3

Powers, Duties, and Liabilities of Partners (Repealed. Sec. 64, Ch. 522, L. 1981)

Part Compiler's Comments

Histories of Repealed Sections:

35-12-301. En. Sec. 7, Ch. 252, L. 1947; R.C.M. 1947, 63-801.

35-12-302. En. Sec. 26, Ch. 252, L. 1947; R.C.M. 1947, 63-907.

35-12-303. En. Sec. 18, Ch. 252, L. 1947; R.C.M. 1947, 63-812.

35-12-304. En. Sec. 19, Ch. 252, L. 1947; R.C.M. 1947, 63-813.

35-12-305. En. Sec. 22, Ch. 252, L. 1947; R.C.M. 1947, 63-903.

35-12-306. En. Sec. 9, Ch. 252, L. 1947; amd. Sec. 16, Ch. 62, L. 1977; R.C.M. 1947, 63-803.

35-12-307. En. Sec. 10, Ch. 252, L. 1947; R.C.M. 1947, 63-804.

35-12-308. En. Sec. 15, Ch. 252, L. 1947; R.C.M. 1947, 63-809.

35-12-309. En. Sec. 17, Ch. 252, L. 1947; R.C.M. 1947, 63-811.

35-12-310. En. Sec. 13, Ch. 252, L. 1947; R.C.M. 1947, 63-807.

35-12-311. En. Sec. 14, Ch. 252, L. 1947; R.C.M. 1947, 63-808.

35-12-312. En. Sec. 11, Ch. 252, L. 1947; R.C.M. 1947, 63-805.

35-12-313. En. Sec. 12, Ch. 252, L. 1947; R.C.M. 1947, 63-806.

35-12-314. En. Sec. 16, Ch. 252, L. 1947; R.C.M. 1947, 63-810(1) thru (3).

Part 4

Dissolution (Repealed. Sec. 64, Ch. 522, L. 1981)

Part Compiler's Comments

Histories of Repealed Sections:

35-12-401. (1)En. Sec. 20, Ch. 252, L. 1947; amd. Sec. 17, Ch. 62, L. 1977; Sec. 63-901, R.C.M. 1947; (2)En. Sec. 16, Ch. 252, L. 1947; Sec. 63-810, R.C.M. 1947; R.C.M. 1947, 63-810(4), 63-901.

35-12-402. En. Sec. 21, Ch. 252, L. 1947; R.C.M. 1947, 63-902.

35-12-403. En. Sec. 23, Ch. 252, L. 1947; R.C.M. 1947, 63-904.

Part 5

General Provisions

Part Cross-References

Foreign limited partnerships, Title 35, ch. 12, part 13.

35-12-501. Short title. This chapter may be cited as the "Uniform Limited Partnership Act".

History: En. Sec. 1, Ch. 522, L. 1981.

35-12-502. Construction and application. This chapter must be so construed and applied to effect its general purpose to make uniform the law with respect to limited partnerships among states enacting it.

History: En. Sec. 2, Ch. 522, L. 1981.

35-12-503. Rules for cases not provided for in this chapter. In any case not provided for in this chapter, the provisions of the Uniform Partnership Act (Title 35, chapter 10) govern.

History: En. Sec. 3, Ch. 522, L. 1981.

35-12-504. Definitions. In this chapter, the following definitions apply:

(1) "Certificate of limited partnership" means the certificate referred to in 35-12-601, as that certificate is amended or restated from time to time.

(2) "Contribution" means any cash, property, or services rendered or a promissory note or other binding obligation to contribute cash or property or to perform services, which a partner contributes to a limited partnership in his capacity as a partner.

(3) "Event of withdrawal of a general partner" means an event that causes a person to cease to be a general partner as provided in 35-12-802.

(4) "Foreign limited partnership" means a partnership formed under the laws of any state other than this state and having as partners one or more general partners and one or more limited partners.

(5) "General partner" means a person who has been admitted to a limited partnership as a general partner in accordance with the partnership agreement and who is named in the certificate of limited partnership as a general partner.

(6) "Limited partner" means a person who has been admitted to a limited partnership as a limited partner in accordance with the partnership agreement.

(7) "Limited partnership" and "domestic limited partnership" mean a partnership formed by two or more persons under the laws of this state and having one or more general partners and one or more limited partners.

(8) "Partner" means any limited partner or general partner.

(9) "Partnership agreement" means the agreement, written or, to the extent not prohibited by law, oral, or both, of the partners as to the affairs of a limited partnership and the conduct of its business.

(10) "Partnership interest" has the meaning specified in 35-12-1101.

(11) "Person" means a natural person, partnership, limited partnership (domestic or foreign), trust, estate, association, or corporation.

(12) "State" means a state, territory, or possession of the United States, the District of Columbia, or the Commonwealth of Puerto Rico.

History: En. Sec. 4, Ch. 522, L. 1981; amd. Sec. 4, Ch. 268, L. 1997.

35-12-505. Name. (1) The name of each limited partnership as set forth in its certificate of limited partnership:

(a) must contain the words "limited partnership", the abbreviation "l.p.", or the designation "lp";

(b) may not contain the name of a limited partner unless:

(i) it is also the name of a general partner; or

(ii) the business of the limited partnership had been carried on under that name before the admission of that limited partner;

(c) must be distinguishable on the record from the name of any corporation, limited partnership, or limited liability company organized under the laws of this state or licensed or registered as a foreign corporation or limited partnership in this state.

(2) The use of a limited partnership's name by another corporation, limited partnership, or limited liability company is governed by 35-1-308.

History: En. Sec. 5, Ch. 522, L. 1981; amd. Sec. 88, Ch. 120, L. 1993; amd. Sec. 5, Ch. 268, L. 1997; amd. Sec. 22, Ch. 229, L. 1999.

Compiler's Comments

1999 Amendment: Chapter 229 inserted (2) providing that use of limited partnership's name is governed by 35-1-308; and made minor changes in style. Amendment effective April 2, 1999.

Cross-References

Assumed business names, Title 30, ch. 13, part 2.

Exclusivity of corporate name, 30-13-202.

Business corporation — corporate name, Title 35, ch. 1, part 3.

Business trust name, 35-5-201.

Acquisition of new name by dissolved corporation upon reinstatement, 35-6-203.

Rural cooperative utility names, 35-18-201.

35-12-506. Reservation of name. (1) The exclusive right to the use of a name may be reserved by:

(a) any person intending to organize a limited partnership under this chapter and to adopt that name;

(b) any domestic limited partnership or any foreign limited partnership registered in this state which, in either case, intends to adopt that name;

(c) any foreign limited partnership intending to register in this state and to adopt that name; and

(d) any person intending to organize a foreign limited partnership and intending to have it registered in this state and to adopt that name.

(2) The reservation must be made by filing with the secretary of state an application, executed by the applicant, to reserve a specified name. If the secretary of state finds that the name is available for use by a domestic or

foreign limited partnership, he shall reserve the name for the exclusive use of the applicant for a period of 120 days. Once having reserved a name, the applicant may not again reserve the name until more than 60 days after the expiration of the last 120-day period for which that applicant had reserved that name. The right to the exclusive use of a name so reserved may be transferred to any other person by filing in the office of the secretary of state a notice of the transfer, executed by the applicant for whom the name was reserved and specifying the name and address of the transferee.

History: En. Sec. 6, Ch. 522, L. 1981.

Cross-References

Reservation of proposed assumed business name, 30-13-211.

35-12-507. Specified office and agent. Each limited partnership shall continuously maintain in this state:

(1) an office, which may but need not be a place of its business in this state, at which must be kept the records required to be maintained by 35-12-508; and

(2) an agent for service of process on the limited partnership, which agent must be an individual resident of this state, a domestic corporation, or a foreign corporation authorized to do business in this state.

(3) Unless the registered agent signed the document making the appointment, the appointment of a registered agent or a successor registered agent on whom process may be served is not effective until the agent delivers a statement in writing to the secretary of state accepting the appointment.

History: En. Sec. 7, Ch. 522, L. 1981; amd. Sec. 23, Ch. 229, L. 1999.

Compiler's Comments

1999 Amendment: Chapter 229 inserted (3) regarding effectiveness of appointment of registered agent. Amendment effective April 2, 1999.

Cross-References

Agency, Title 28, ch. 10.

35-12-508. Records to be kept. (1) Each limited partnership shall keep at the office referred to in 35-12-507(1) the following:

(a) a current list of the full name and last-known business address of each partner, separately identifying the general partners, in alphabetical order, and the limited partners, in alphabetical order;

(b) a copy of the certificate of limited partnership and all certificates of amendment, together with executed copies of any powers of attorney pursuant to which any certificate has been executed;

(c) copies of the limited partnership's federal, state, and local income tax returns and reports, if any, for the 3 most recent years;

(d) copies of any then-effective written partnership agreements and of any financial statements of the limited partnership for the 3 most recent years; and

(e) unless contained in a written partnership agreement, a writing setting out:

(i) the amount of cash and a description and statement of the agreed value of the other property or services contributed by each partner and that each partner has agreed to contribute;

(ii) the times at which or the events on the happening of which any additional contributions agreed to be made by each partner are to be made;

(iii) any right of a partner to receive or of a general partner to make distributions to a partner that include a return of all or any part of the partner's contribution; and

(iv) any events, upon the happening of which, the limited partnership is to be dissolved and its affairs wound up.

(2) Records kept under this section must be available for inspection and copying at the reasonable request and at the expense of any partner during ordinary business hours.

History: En. Sec. 8, Ch. 522, L. 1981; amd. Sec. 6, Ch. 268, L. 1997.

35-12-509. Nature of business. A limited partnership may carry on any business that a partnership without limited partners may carry on.

History: En. Sec. 9, Ch. 522, L. 1981.

35-12-510. Business transactions of partner with the partnership. Except as otherwise provided in the partnership agreement, a partner may lend money to and transact other business with the limited partnership and, subject to other applicable provisions of law, has the same rights and obligations with respect thereto as a person who is not a partner.

History: En. Sec. 10, Ch. 522, L. 1981.

35-12-511 through 35-12-520 reserved.

35-12-521. Secretary of state to establish fees. The secretary of state shall set filing fees reasonably related to the costs of processing the applications and certificates. The secretary of state may establish fees for filing a certificate of limited partnership, certificate of amendment or restatement, certificate of cancellation, an application to reserve a name, a notice of transfer of a reserved name, an application for registration of a foreign limited partnership, a certificate of cancellation or correction of a foreign limited partnership or filing any other statement or report of a domestic or foreign limited partnership. The secretary of state shall maintain records sufficient to support the fee charged for the filing requirements.

History: En. Sec. 65, Ch. 522, L. 1981; amd. Sec. 7, Ch. 268, L. 1997.

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

Part 6

Formation — Certificate of Limited Partnership

Part Cross-References

Assumed business names, Title 30, ch. 13, part 2.

Formation, articles of incorporation, and bylaws of business corporations, Title 35, ch. 1, part 2.

Formation, articles of incorporation, and bylaws of nonprofit corporations, Title 35, ch. 2, part 2.

Formation of religious corporations sole, Title 35, ch. 3, part 2.

Organization of professional service corporations, Title 35, ch. 4, part 2.

Formation and operation of business trusts, Title 35, ch. 5, part 2.

Formation of mining partnerships, Title 35, ch. 13, part 1.

Formation, articles of incorporation, and bylaws of cooperative associations, Title 35, ch. 15, part 2.

Formation of agricultural associations, Title 35, ch. 16, part 2.

Formation of cooperative agricultural marketing associations, Title 35, ch. 17, part 2.

Formation, articles, and bylaws of rural cooperative utilities, Title 35, ch. 18, part 2.

Formation of cemetery associations, Title 35, ch. 20, part 1.

35-12-601. Certificate of limited partnership. (1) In order to form a limited partnership, a certificate of limited partnership must be executed, must be filed in the office of the secretary of state, and must set forth:

(a) the name of the limited partnership;

(b) the address of the office and the name and address of the agent for service of process required to be maintained by 35-12-507;

(c) the name and the business address of each general partner; and

(d) any other matters the general partners, in their sole discretion, determine to include.

(2) A limited partnership is formed at the time of the filing of the certificate of limited partnership in the office of the secretary of state or at any later time specified in the certificate of limited partnership if, in each case, there has been substantial compliance with the requirements of this section.

History: En. Sec. 11, Ch. 522, L. 1981; amd. Sec. 8, Ch. 268, L. 1997.

35-12-602. Amendments to certificate — restated certificates. (1) A certificate of limited partnership is amended by filing a certificate of amendment in the office of the secretary of state. The certificate must set forth:

(a) the name of the limited partnership;

(b) the date of filing of the certificate; and

(c) the amendments to the certificate.

(2) An amendment to a certificate of limited partnership reflecting the occurrence of the event or events must be filed within 30 days after the happening of any of the following events:

(a) the admission of a new general partner;

(b) the withdrawal of a general partner; or

(c) the continuation of the business under 35-12-1201(3) after an event of withdrawal of a general partner.

(3) A certificate of limited partnership must be amended promptly by any general partner upon becoming aware that any statement in the certificate was false when made or that any arrangements or other facts described have changed, making the certificate inaccurate in any respect.

(4) A certificate of limited partnership may be amended at any time for any other proper purpose the general partners may determine.

(5) A person is not liable because an amendment to a certificate of limited partnership has not been filed to reflect the occurrence of any event referred to in subsection (2) if the amendment is filed within the 30-day period specified in subsection (2).

(6) A restated certificate of limited partnership may be executed and filed in the same manner as a certificate of amendment.

History: En. Sec. 12, Ch. 522, L. 1981; amd. Sec. 9, Ch. 268, L. 1997.

Cross-References

Admission of new partner, 35-12-701, 35-12-801.

When person ceases to be general partner of limited partnership, 35-12-802.

35-12-603. Cancellation of certificate. A certificate of limited partnership must be canceled upon the dissolution and the commencement of winding up of the limited partnership and at any other time there are no remaining limited partners. A certificate of cancellation must be filed in the office of the secretary of state and shall set forth:

(1) the name of the limited partnership;

(2) the date of filing of the certificate of limited partnership;

(3) the reason for filing the certificate of cancellation;

(4) the effective date (which must be a date certain) of cancellation if it is not to be effective upon the filing of the certificate; and

(5) any other information the general partners filing the certificate may determine.

History: En. Sec. 13, Ch. 522, L. 1981.

35-12-604. Execution of certificates. (1) Each certificate required by 35-12-601 through 35-12-609 to be filed in the office of the secretary of state must be executed in the following manner:

(a) An initial certificate of limited partnership must be signed by all general partners.

(b) Each certificate of amendment must be signed by at least one general partner and by each other general partner who is designated in the certificate as a new general partner.

(c) Each certificate of cancellation must be signed by all general partners.

(2) Any person may sign a certificate by an attorney-in-fact, but any power of attorney to sign a certificate relating to the admission of a general partner must specifically describe the admission.

(3) The execution of a certificate by a general partner constitutes an affirmation under the penalties of perjury that the facts stated in the certificate are true.

History: En. Sec. 14, Ch. 522, L. 1981; amd. Sec. 10, Ch. 268, L. 1997.

35-12-605. Execution by judicial act. If the persons required by 35-12-604 to execute any certificate fail or refuse to do so, any other person who is adversely affected by the failure or refusal may petition the district court to direct the execution of the certificate. If the court finds that it is proper for the certificate to be executed and that the persons so designated have failed or refused to execute the certificate, it shall order the secretary of state to record an appropriate certificate.

History: En. Sec. 15, Ch. 522, L. 1981; amd. Sec. 11, Ch. 268, L. 1997.

35-12-606. Filing in the office of the secretary of state. (1) One original and one copy of the certificate of limited partnership and of any certificates of amendment, restatement, or cancellation or of any judicial decree of amendment, restatement, or cancellation must be delivered to the secretary of state. A person who executes a certificate as an agent or fiduciary need not exhibit evidence of the person's authority as a prerequisite to filing. Unless the secretary of state finds that any certificate does not conform to law, upon receipt of all filing fees required by law the secretary of state shall:

(a) endorse on the original and the copy the word "filed" and the day, month, and year of the filing;

(b) file the original in the secretary of state's office; and

(c) return the copy to the person who filed it or the person's representative.

(2) Upon the filing of a certificate of amendment, restatement, or judicial decree of amendment in the office of the secretary of state, the certificate of

limited partnership is amended or restated as set forth in the certificate. Upon the effective date of a certificate of cancellation or a judicial decree of cancellation, the certificate of limited partnership is canceled.

History: En. Sec. 16, Ch. 522, L. 1981; amd. Sec. 52, Ch. 131, L. 1983; amd. Sec. 12, Ch. 268, L. 1997.

35-12-607. Liability for false statement in certificate. If any certificate of limited partnership or certificate of amendment, restatement, or cancellation contains a false statement, any person who suffers loss by reliance on the statement may recover damages for the loss from:

(1) any person actually executing the certificate or causing another to execute it on the person's behalf who knew and any general partner who knew or should have known the statement to be false at the time the certificate was executed; and

(2) any general partner who after the execution of the certificate knew or should have known that any arrangements or other facts described in the certificate have changed, making the statement inaccurate in any respect, within a sufficient time before the statement was relied upon to have reasonably enabled that general partner to cancel, restate, or amend the certificate or to file a petition for its cancellation, restatement, or amendment under 35-12-605.

History: En. Sec. 17, Ch. 522, L. 1981; amd. Sec. 13, Ch. 268, L. 1997.

Cross-References

Nature of partner's liability, 35-10-307.

Liability of limited partner, 35-12-703.

35-12-608. Constructive notice. The fact that a certificate of limited partnership is on file in the office of the secretary of state is constructive notice that the partnership is a limited partnership and that the persons designated in the certificate as general partners are general partners but is not constructive notice of any other fact.

History: En. Sec. 18, Ch. 522, L. 1981; amd. Sec. 14, Ch. 268, L. 1997.

35-12-609. Delivery of certificates to limited partners. Upon the return by the secretary of state pursuant to 35-12-606 of any certificate marked "filed", the general partners shall promptly deliver or mail a copy of the certificate to each limited partner unless the partnership agreement provides otherwise.

History: En. Sec. 19, Ch. 522, L. 1981.

35-12-610. Term and renewal of certification. (1) Certification of a limited partnership is effective for a term of 5 years from the date of filing or renewal of certification. Upon application for renewal of certification on forms furnished by the secretary of state, the certification may be renewed for another 5-year term.

(2) Not less than 90 days before the expiration date of certification of a limited partnership, the secretary of state shall notify the listed general partner or partners or specified agent of the pending expiration by addressing a notice to the last-known address of the general partner or partners or specified agent.

(3) If the general partner or partners or specified agent fail to file an application for renewal with the secretary of state within a 90-day period prior to the expiration date of the certification, the secretary of state shall cancel the certification.

(4) A registration in force on July 1, 1991, expires 5 years from the date of the filing of certification or on July 1, 1992, whichever is later, if renewal of the certification is not effected in the manner provided for in 35-12-610 through 35-12-613.

History: En. Sec. 1, Ch. 533, L. 1991.

35-12-611. Application for renewal of certification. One original and one copy of an application for renewal of certification of a limited partnership must be executed and delivered to the secretary of state. The application must include but is not limited to the information required by 35-12-601.

History: En. Sec. 2, Ch. 533, L. 1991; amd. Sec. 15, Ch. 268, L. 1997.

35-12-612. Filing of application for renewal of certification — issuance of certificate. (1) If the secretary of state finds that the application for renewal of certification of a limited partnership complies with the provisions of this part, he shall, when all fees have been paid as provided by rule:

(a) endorse on the original and on the copy the word "filed" and the month, day, and year of filing;

(b) file the original in his office; and

(c) issue a certificate of renewal, to which he shall affix the copy.

(2) The secretary of state shall return to the general partner or partners submitting the application the certificate of renewal, together with an attached copy of the application for renewal of certification of a limited partnership.

History: En. Sec. 3, Ch. 533, L. 1991.

35-12-613. Involuntary cancellation of certificate. For a certificate filed prior to July 1, 1991, the secretary of state shall cancel the certificate of limited partnership after July 1, 1992, if the certification is more than 5 years old and not renewed in accordance with this part.

History: En. Sec. 4, Ch. 533, L. 1991.

35-12-614 reserved.

35-12-615. Filing of facsimile copy. (1) The secretary of state may treat a facsimile copy of a document that is required to be filed under this chapter and the signatures on the facsimile copy in the same manner as an original for purposes of this chapter. If all other requirements are met, the date of filing relates back to the date of receipt of the facsimile copy.

(2) A person who files a false document by facsimile copy is liable to the party aggrieved for three times the amount of damages resulting from the filing of the false document.

History: En. Sec. 4, Ch. 273, L. 1989; amd. Sec. 9, Ch. 290, L. 1997.

Cross-References

Assumed business name — filing of facsimile copy, 30-13-221.

Trademarks — filing of facsimile copy, 30-13-341.

Part 7

Limited Partners

35-12-701. Admission of limited partners. (1) A person becomes a limited partner:

(a) at the time the limited partnership is formed; or

(b) at any later time specified in the partnership agreement for becoming a limited partner.

(2) After the filing of a limited partnership's original certificate of limited partnership, a person may be admitted as an additional limited partner:

(a) in the case of a person acquiring a partnership interest directly from the limited partnership, upon compliance with the partnership agreement or, if the partnership agreement does not so provide, upon the written consent of all partners; and

(b) in the case of an assignee of a partnership interest of a partner who has the power, as provided in 35-12-1104, to grant the assignee the right to become a limited partner, upon the exercise of that power and compliance with any conditions limiting the grant or exercise of the power.

History: En. Sec. 20, Ch. 522, L. 1981; amd. Sec. 16, Ch. 268, L. 1997.

Cross-References

General powers and liabilities of general partner, 35-12-803.

35-12-702. Voting. Subject to the provisions of 35-12-703, the partnership agreement may grant to all or a specified group of the limited partners the right to vote (on a per capita or any other basis) upon any matter.

History: En. Sec. 21, Ch. 522, L. 1981.

35-12-703. Liability to third parties. (1) Except as provided in subsection (4), a limited partner is not liable for the obligations of a limited partnership unless, in addition to the exercise of the rights and powers as a limited partner, the limited partner participates in the control of the business. However, if the limited partner participates in the control of the business, the limited partner is liable only to persons who transact business with the limited partnership reasonably believing, based on the limited partner's conduct, that the limited partner is a general partner.

(2) A limited partner does not participate in the control of the business within the meaning of subsection (1) solely by doing one or more of the following:

(a) being a contractor for or an agent or employee of the limited partnership or of a general partner or being an officer, director, or shareholder of a general partner that is a corporation;

(b) consulting with and advising a general partner with respect to the business of the limited partnership;

(c) acting as surety for the limited partnership or guaranteeing or assuming one or more specific obligations of the limited partnership;

(d) taking any action required or permitted by law to bring or pursue a derivative action in the right of the limited partnership;

(e) requesting or attending a meeting of partners;

(f) proposing, approving, or disapproving, by voting or otherwise, one or more of the following matters:

(i) the dissolution and winding up of the limited partnership;

(ii) the sale, exchange, lease, mortgage, pledge, or other transfer of all or substantially all of the assets of the limited partnership;

(iii) the incurrence of indebtedness by the limited partnership other than in the ordinary course of its business;

(iv) a change in the nature of the business;

(v) the admission or removal of a general partner;

(vi) the admission or removal of a limited partner;

(vii) a transaction involving an actual or potential conflict of interest between a general partner and the limited partnership or the limited partners;

(viii) an amendment to the partnership agreement or certificates of limited partnership; or

(ix) matters related to the business of the limited partnership not otherwise enumerated in this subsection (2)(f) that the partnership states in writing may be subject to the approval or disapproval of limited partners;

(g) winding up the limited partnership pursuant to 35-12-1203; or

(h) exercise any right or power permitted to limited partners under this chapter and not specifically enumerated in this subsection (2).

(3) The enumeration in subsection (2) does not mean that the possession or exercise of any other powers by a limited partner constitutes participation by the limited partner in the business of the limited partnership.

(4) A limited partner who knowingly permits the limited partner's name to be used in the name of the limited partnership, except under circumstances permitted by 35-12-505(2)(a) and (2)(b), is liable to creditors who extend credit to the limited partnership without actual knowledge that the limited partner is not a general partner.

History: En. Sec. 22, Ch. 522, L. 1981; amd. Sec. 17, Ch. 268, L. 1997.

Cross-References

Limited partnership defined, 35-12-504.

Partnership name not to contain surname of limited partner — exceptions, 35-12-505.

35-12-704. Person erroneously believing limited partner status. (1) Except as provided in subsection (2), a person who makes a contribution to a business enterprise and erroneously and in good faith believes that the person has become a limited partner in the enterprise is not a general partner in the enterprise and is not bound by its obligations by reason of making the contribution, receiving distributions from the enterprise, or exercising any rights of a limited partner if, on ascertaining the mistake, the person:

(a) causes an appropriate certificate of limited partnership or a certificate of amendment to be executed and filed; or

(b) withdraws from future equity participation in the enterprise by executing and filing in the office of the secretary of state a certificate declaring withdrawal under this section.

(2) Any person who makes a contribution of the kind described in subsection (1) is liable as a general partner to any third party who transacts business with the enterprise before the person withdraws and an appropriate certificate, if any, is filed to show that the person is not a general partner, but in each case only if the third party actually believed in good faith that the person was a general partner at the time of the transaction.

History: En. Sec. 23, Ch. 522, L. 1981; amd. Sec. 1, Ch. 85, L. 1985; amd. Sec. 18, Ch. 268, L. 1997.

Cross-References

Secretary of State to establish fees, 35-12-521.

35-12-705. Right to information. Each limited partner has the right to:

(1) inspect and copy any of the partnership records required by 35-12-508 to be maintained; and

(2) obtain from the general partners from time to time upon reasonable demand:

(a) true and full information regarding the state of the business and financial condition of the limited partnership;

(b) promptly after becoming available, a copy of the limited partnership's federal, state, and local income tax returns for each year; and

(c) any other information regarding the affairs of the limited partnership as is just and reasonable.

History: En. Sec. 24, Ch. 522, L. 1981.

Cross-References

Rights of partners, 35-10-301; 35-10-402; 35-10-405; Title 35, ch. 10, part 5; 35-10-609.

Rights of estate, 35-12-1105.

Part 8

General Partners

35-12-801. Admission. After the filing of a limited partnership's original certificate of limited partnership, new general partners may be admitted as provided in writing in the partnership agreement or, if the partnership agreement does not provide in writing for the admission of additional general partners, with the written consent of all partners.

History: En. Sec. 25, Ch. 522, L. 1981; amd. Sec. 19, Ch. 268, L. 1997.

35-12-802. When person ceases to be general partner of limited partnership. Except as otherwise approved by the specific written consent, at the time, of all partners, a person ceases to be a general partner of a limited partnership on the happening of any of the following events:

(1) the general partner withdraws from the limited partnership as provided in 35-12-1002;

(2) the general partner ceases to be a member of the limited partnership as provided in 35-12-1102;

(3) the general partner is removed as a general partner in accordance with the partnership agreement;

(4) unless otherwise provided in writing in the partnership agreement, the general partner:

(a) makes an assignment for the benefit of creditors;

(b) files a voluntary petition in bankruptcy;

(c) is adjudicated a bankrupt or insolvent;

(d) files any petition or answer seeking for the general partner any reorganization, arrangement, composition, readjustment, liquidation, dissolution, or similar relief under any statute, law, or administrative rule;

(e) files any answer or other pleading admitting or failing to contest the material allegations of a petition filed against the general partner in any proceeding of this nature; or

(f) seeks, consents to, or acquiesces in the appointment of any trustee, receiver, or liquidator of the general partner or of all or any substantial part of the general partner's properties;

(5) unless otherwise provided in writing in the partnership agreement, if, within 120 days after the commencement of any proceeding against the general partner seeking any reorganization, arrangement, composition, readjustment,

liquidation, dissolution, or similar relief under any statute, law, or administrative rule, the proceeding has not been dismissed or if, within 90 days after the appointment without the general partner's consent or acquiescence of any trustee, receiver, or liquidator of the general partner or of all or any substantial part of the general partner's properties, the appointment is not vacated or stayed or if, within 90 days after the expiration of any stay, the appointment is not vacated;

(6) in the case of a general partner who is a natural person:

(a) the general partner's death; or

(b) the entry by a court of competent jurisdiction adjudicating the general partner incompetent to manage the general partner's person or property;

(7) in the case of a general partner who is acting as general partner in the capacity of a trustee of a trust, the termination of the trust (but not merely the substitution of a new trustee);

(8) in the case of a general partner that is a partnership, the dissolution and commencement of winding up of the partnership;

(9) in the case of a general partner that is a corporation, the filing of a certificate of dissolution or its equivalent for the corporation or the revocation of its charter; and

(10) in the case of an estate, the distribution by the fiduciary of all of the estate's interest in the partnership.

History: En. Sec. 26, Ch. 522, L. 1981; amd. Sec. 20, Ch. 268, L. 1997.

35-12-803. General powers and liabilities. (1) Except as otherwise provided in this chapter and in the partnership agreement, a general partner of a limited partnership has all the rights and powers and is subject to all the restrictions of a partner in a partnership without limited partners.

(2) Except as otherwise provided in this chapter, a general partner of a limited partnership has the liabilities of a partner in a partnership without limited partners to persons other than the partnership and the other partners. Except as provided in this chapter or in the partnership agreement, a general partner of a limited partnership has the liabilities of a partner in a partnership without limited partners to the partnership and to the other partners.

History: En. Sec. 27, Ch. 522, L. 1981; amd. Sec. 2, Ch. 85, L. 1985.

Cross-References

Cancellation or amendment of partnership certificate, 35-12-602, 35-12-603.

Limited partners — liability to third parties, 35-12-703.

35-12-804. Contributions by a general partner. A general partner may make contributions to a limited partnership and share in the profits and losses of and in distributions from the limited partnership as a general partner. A general partner may also make contributions to and share in profits, losses, and distributions as a limited partner. A person who is both a general partner and a limited partner has all the rights and powers and is subject to all the restrictions and liabilities of a general partner and also has, except as otherwise provided in the partnership agreement, all powers and is subject to the restrictions of a limited partner to the extent he is participating in the partnership as a limited partner.

History: En. Sec. 28, Ch. 522, L. 1981.

35-12-805. Voting. The partnership agreement may grant to all or a specified group of general partners the right to vote (on a per capita or any other basis), separately or with all or any class of the limited partners, on any matter.

History: En. Sec. 29, Ch. 522, L. 1981.

Part 9
Finance

35-12-901. Form of contributions. The contribution of a partner may be in cash, property, or services rendered or a promissory note or other obligation to contribute cash or property or to perform services.

History: En. Sec. 30, Ch. 522, L. 1981.

35-12-902. Liability for contributions. (1) A promise by a limited partner to contribute to the limited partnership is not enforceable unless set out in a writing signed by the limited partner.

(2) Except as otherwise provided in the partnership agreement, a partner is liable to the limited partnership for any enforceable promise to contribute cash or property or to perform services regardless of whether the partner is personally unable to perform because of disability, death, or any other reason. If a partner does not make the required contribution of property or services, the partner is obligated at the option of the limited partnership to contribute cash equal to that portion of the value, as stated in the partnership records required to be kept pursuant to 35-12-508, of the stated contribution that has not been made.

(3) Unless otherwise provided in the partnership agreement, the obligation of a partner to make a contribution or return money or other property paid or distributed in violation of this chapter may be compromised only by consent of all of the partners. Notwithstanding a compromise so authorized, a creditor of a limited partnership who extends credit or otherwise acts in reliance on that obligation after the partner signs a writing that, in either case, reflects the obligation and before the amendment or cancellation to reflect the compromise may enforce the precompromise obligation.

History: En. Sec. 31, Ch. 522, L. 1981; amd. Sec. 21, Ch. 268, L. 1997.

Cross-References

Nature of partner's liability, 35-10-307.

35-12-903. Allocation of profits and losses. The profits and losses of a limited partnership must be allocated among the partners and among classes of partners in the manner provided in writing in the partnership agreement. If the partnership agreement does not provide for the allocation in writing, profits and losses must be allocated on the basis of the value, as stated in the partnership records required to be kept pursuant to 35-12-508, of the contributions actually made by each partner to the extent they have not been returned.

History: En. Sec. 32, Ch. 522, L. 1981; amd. Sec. 22, Ch. 268, L. 1997.

35-12-904. Allocation of distributions. Distributions of cash or other assets of a limited partnership must be allocated among the partners and among classes of partners in the manner provided in writing in the partnership agreement. If the partnership agreement does not provide for the allocation in writing, distributions must be made on the basis of the value, as stated in the partnership records required to be kept pursuant to 35-12-508, of the contributions actually made by each partner to the extent they have not been returned.

History: **En. Sec. 33, Ch. 522, L. 1981; amd. Sec. 23, Ch. 268, L. 1997.**

Part 10

Distribution and Withdrawals

35-12-1001. Interim distributions. Except as otherwise provided in 35-12-1001 through 35-12-1008, a partner is entitled to receive distributions from a limited partnership before the partner's withdrawal from the limited partnership and before the dissolution and winding up to the extent and at the times or on the happening of the events specified in the partnership agreement.

History: **En. Sec. 34, Ch. 522, L. 1981; amd. Sec. 24, Ch. 268, L. 1997.**

35-12-1002. Withdrawal of general partner. A general partner may withdraw from a limited partnership at any time by giving written notice to the other partners, but if the withdrawal violates the partnership agreement, the limited partnership may recover from the withdrawing general partner damages for breach of the partnership agreement and offset the damages against the amount otherwise distributable to him.

History: **En. Sec. 35, Ch. 522, L. 1981.**

35-12-1003. Withdrawal of limited partner. A limited partner may withdraw from a limited partnership at the time or on the happening of the events specified in writing in the partnership agreement. If the partnership agreement does not specify the time or the events on the happening of which a limited partner may withdraw, a limited partner may not withdraw prior to the time of the dissolution and winding up of the limited partnership.

History: **En. Sec. 36, Ch. 522, L. 1981; amd. Sec. 25, Ch. 268, L. 1997.**

35-12-1004. Distributions upon withdrawal. Upon withdrawal any withdrawing partner is entitled to receive any distributions to which the partner is entitled under the partnership agreement and, if not provided, the partner is entitled to receive, within a reasonable time after withdrawal, the fair value of the partner's interest in the limited partnership as of the date of withdrawal, based upon the partner's right to share in distributions from the limited partnership.

History: **En. Sec. 37, Ch. 522, L. 1981; amd. Sec. 26, Ch. 268, L. 1997.**

35-12-1005. Distributions in kind. Except as provided in writing in the partnership agreement, a partner, regardless of the nature of the partner's contribution, has no right to demand and receive any distribution from a limited partnership in any form other than cash. Except as provided in writing in the partnership agreement, a partner may not be compelled to accept a distribution of any asset in kind from a limited partnership to the extent that the percentage of the asset distributed to the partner exceeds a percentage of that asset that is equal to the percentage in which the partner shares in distributions from the limited partnership.

History: En. Sec. 38, Ch. 522, L. 1981; amd. Sec. 27, Ch. 268, L. 1997.

35-12-1006. Right to distributions. At the time a partner becomes entitled to receive a distribution, he has the status of and is entitled to all of the remedies available to a creditor of the limited partnership with respect to the distribution.

History: En. Sec. 39, Ch. 522, L. 1981.

35-12-1007. Limitations on distributions. A partner may not receive a distribution from a limited partnership to the extent that, after giving effect to the distribution, all liabilities of the limited partnership other than liabilities to partners on account of their partnership interests exceed the fair value of the partnership's assets.

History: En. Sec. 40, Ch. 522, L. 1981.

35-12-1008. Liability upon return of contributions. (1) If a partner has received the return of any part of the partner's contribution without violation of the partnership agreement or this chapter, for a period of 1 year after the return, the partner is liable to the limited partnership for the amount of the contribution returned, but only to the extent necessary to discharge the limited partnership's liabilities to creditors who extended credit to the limited partnership during the period the contribution was held by the partnership.

(2) If a partner has received the return of any part of the partner's contribution in violation of the partnership agreement or this chapter, for a period of 6 years after the return, the partner is liable to the limited partnership for the amount of the contribution wrongfully returned.

(3) A partner has received a return of the partner's contribution to the extent that a distribution to the partner reduces the partner's share of the fair value of the net assets of the limited partnership below the value, as set forth in the partnership records required to be kept pursuant to 35-12-508, of the partner's contributions that have not been distributed to the partner.

History: En. Sec. 41, Ch. 522, L. 1981; amd. Sec. 28, Ch. 268, L. 1997.

Part 11

Assignment of Partnership Interests

35-12-1101. Nature of partnership interest. A partnership interest is a partner's share of the profits and losses of a limited partnership and the right to receive distributions of partnership assets. A partnership interest is personal property.

History: En. Sec. 42, Ch. 522, L. 1981.

Cross-References

Partnership property, 35-10-203.

Conveyance of partnership's property, 35-10-302.

Property rights of partner, Title 35, ch. 10, part 5.

35-12-1102. Assignment of partnership interest. Except as otherwise provided in the partnership agreement, a partnership interest is assignable in whole or in part. An assignment of a partnership interest does not dissolve a limited partnership or entitle the assignee to become a partner or to exercise any of the rights thereof. An assignment only entitles the assignee to receive, to the extent assigned, any distributions to which the assignor would be entitled. Except as otherwise provided in the partnership agreement, a partner ceases to be a partner upon assignment of all his partnership interest.

History: En. Sec. 43, Ch. 522, L. 1981.

Cross-References

Nature of partner's liability, 35-10-307.

Cancellation or amendment of partnership certificate, 35-12-602, 35-12-603.

35-12-1103. Rights of creditors. On due application to a court of competent jurisdiction by any judgment creditor of a partner, the court may charge the partnership interest of the partner with payment of the unsatisfied amount of the judgment debt, with interest thereon. To the extent so charged, the judgment creditor has only the rights of an assignee of the partnership interest. This chapter does not deprive any partner of the benefit of any exemption laws applicable to his partnership interest.

History: En. Sec. 44, Ch. 522, L. 1981.

Cross-References

Property exempt from execution, Title 25, ch. 13, part 6.

Relative rights of different creditors, 31-2-105.

35-12-1104. Right of assignee to become limited partner. (1) An assignee of a partnership interest, including an assignee of a general partner, may become a limited partner if and to the extent that:

(a) the assignor gives the assignee that right in accordance with authority described in the partnership agreement; or

(b) in the absence of that authority, all other partners consent.

(2) An assignee who has become a limited partner has, to the extent assigned, all the rights and powers and is subject to all the restrictions and liabilities of a limited partner under the partnership agreement and this chapter. An assignee who becomes a limited partner is also liable for the obligations of the partner's assignor to make and return contributions as provided in 35-12-1001 through 35-12-1008, but the assignee is not obligated for liabilities unknown to the assignee at the time the assignee became a limited partner.

(3) If an assignee of a partnership interest becomes a limited partner, the assignor is not released from the liability to the limited partnership under 35-12-607 and 35-12-902.

History: En. Sec. 45, Ch. 522, L. 1981; amd. Sec. 29, Ch. 268, L. 1997.

35-12-1105. Power of estate of deceased or incompetent partner. If a partner who is a natural person dies or a court of competent jurisdiction adjudges him to be incompetent to manage his person or his property, the partner's personal representative, guardian, conservator, or other legal representative may exercise all of the partner's rights for the purpose of settling his estate or administering his property, including any power the partner had to give an assignee the right to become a limited partner. If a partner that is a corporation, trust, or other entity other than a natural person is dissolved or terminated, those powers may be exercised by the legal representative or successor of the partner.

History: En. Sec. 46, Ch. 522, L. 1981.

Cross-References

Assignment of partnership interest, 35-12-1102.

Part 12
Dissolution

Part Cross-References

Dissolution and liquidation of business corporations, Title 35, ch. 1, part 9.

Dissolution and liquidation of nonprofit corporations, Title 35, ch. 2, part 7.

Involuntary corporate dissolution, Title 35, ch. 6.

Dissolution and winding up of partnerships in general, Title 35, ch. 10, part 6.

Sale or disposition of assets of cooperative associations, 35-15-506.

Sale or disposition of assets of cooperative agricultural marketing associations, 35-17-506.

Dissolution of rural cooperative utilities, 35-18-404, 35-18-405.

35-12-1201. Nonjudicial dissolution. A limited partnership is dissolved and its affairs must be wound up on the occurrence of the first of the following:

(1) at the time or on the happening of the events specified in writing in the partnership agreement;

(2) on the unanimous written consent of all partners;

(3) on the happening of an event of withdrawal of a general partner unless at the time there is at least one other general partner and the written provisions of the partnership agreement permits the business of the limited partnership to be carried on by the remaining general partner and the remaining general partner does so, but the limited partnership may not be dissolved or wound up by reason of any event of withdrawal if, within 90 days after the withdrawal, all partners agree in writing to continue the business of the limited partnership and to the appointment of one or more new general partners if necessary or desired; or

(4) on entry of a decree of judicial dissolution in accordance with 35-12-1202.

History: En. Sec. 47, Ch. 522, L. 1981; amd. Sec. 30, Ch. 268, L. 1997.

35-12-1202. Dissolution by decree of court. On application by or for a partner, the district court may decree a dissolution of a limited partnership whenever it is not reasonably practicable to carry on the business in conformity with the partnership agreement.

History: En. Sec. 48, Ch. 522, L. 1981.

35-12-1203. Winding up. Unless otherwise provided in the partnership agreement, the general partners who have not wrongfully dissolved the limited partnership or, if none, the limited partners may wind up the limited partnership's affairs; but any partner, his legal representative, or his assignee, upon cause shown, may obtain winding up by the district court.

History: En. Sec. 49, Ch. 522, L. 1981.

Cross-References

Right to wind up partnership, 35-10-609.

35-12-1204. Distribution of assets. Upon the winding up of a limited partnership, the assets shall be distributed as follows:

(1) to creditors, including partners who are creditors (to the extent otherwise permitted by law), in satisfaction of liabilities of the limited partnership other than liabilities for distributions to partners pursuant to 35-12-1001 or 35-12-1004;

(2) except as otherwise provided in the partnership agreement, to partners and ex-partners in satisfaction of liabilities for distributions pursuant to 35-12-1001 or 35-12-1004; and

(3) except as otherwise provided in the partnership agreement, to partners first for the return of their contributions and second, respecting their partnership interests, in the proportions in which the partners share in distributions.

History: En. Sec. 50, Ch. 522, L. 1981; amd. Sec. 206, Ch. 368, L. 1991.

Part 13

Foreign Limited Partnerships

35-12-1301. Law governing. Subject to the constitution and public policy of this state, the laws of the state under which a foreign limited partnership is organized govern its organization and internal affairs and the liability of its limited partners, and a foreign limited partnership may not be denied registration by reason of any difference between those laws and the laws of this state.

History: En. Sec. 51, Ch. 522, L. 1981.

35-12-1302. Registration. Before transacting business in this state, a foreign limited partnership shall register with the secretary of state. In order to register, a foreign limited partnership shall submit to the secretary of state one original and one copy of the application for registration as a foreign limited partnership, signed and sworn to by a general partner and setting forth:

(1) the name of the foreign limited partnership and, if different, the name under which it proposes to transact business and register in this state;

(2) the state in which it was formed and the date of its formation;

(3) the name and address of any agent for service of process on the foreign limited partnership whom the foreign limited partnership desires to appoint, which agent must be an individual resident of this state, a domestic corporation, or a foreign corporation authorized to do business in this state and with a place of business in this state;

(4) a statement that the secretary of state is appointed the agent of the foreign limited partnership for service of process if an agent has not been appointed pursuant to subsection (3) or, if appointed, the agent's authority has been revoked or the agent cannot be found or served with the exercise of reasonable diligence;

(5) the address of the office required to be maintained in the state of its organization by the laws of that state or, if not so required, of the principal office of the foreign limited partnership;

(6) the name and business address of each general partner; and

(7) the address of the office at which is kept a list of the names and addresses of the limited partners and their capital contributions, together with an undertaking by the foreign limited partnership to keep those records until the foreign limited partnership's registration in this state is canceled or withdrawn.

History: En. Sec. 52, Ch. 522, L. 1981; amd. Sec. 53, Ch. 131, L. 1983; amd. Sec. 31, Ch. 268, L. 1997.

Cross-References

Service of process, Rule 4D, M.R.Civ.P. (see Title 25, ch. 20).

35-12-1303. Issuance of registration. (1) If the secretary of state finds that an application for registration conforms to law and all requisite fees have been paid, he shall:

(a) endorse on the application the word "filed" and the month, day, and year of the filing thereof;

(b) file in his office the original of the application; and

(c) issue a certificate of registration to transact business in this state.

(2) The certificate of registration, together with a copy of the application, must be returned to the person who filed the application or his representative.

History: En. Sec. 53, Ch. 522, L. 1981; amd. Sec. 54, Ch. 131, L. 1983.

35-12-1304. Name. A foreign limited partnership may register with the secretary of state under any name (whether or not it is the name under which it is registered in its state of organization) that includes the words "limited partnership" and that could be registered by a domestic limited partnership.

History: En. Sec. 54, Ch. 522, L. 1981.

35-12-1305. Changes and amendments. If any statement in a foreign limited partnership's application for registration was false when made or any arrangements or other facts described have changed, making the application inaccurate in any respect, the foreign limited partnership shall promptly file in the office of the secretary of state a certificate, signed and sworn to by a general partner, correcting the statement.

History: En. Sec. 55, Ch. 522, L. 1981.

35-12-1306. Cancellation of registration. A foreign limited partnership may cancel its registration by filing with the secretary of state a certificate of cancellation, signed and sworn to by a general partner. A cancellation does not terminate the authority of the secretary of state to accept service of process on the foreign limited partnership with respect to claims for relief arising out of the transaction of business in this state.

History: En. Sec. 56, Ch. 522, L. 1981.

35-12-1307. Transaction of business without registration. (1) A foreign limited partnership transacting business in this state without registration may not maintain any action, suit, or proceeding in any court of this state until it has registered.

(2) The failure of a foreign limited partnership to register in this state does not impair the validity of any contract or act of the foreign limited partnership and does not prevent the foreign limited partnership from defending any action, suit, or proceeding in any court of this state.

(3) A limited partner of a foreign limited partnership is not liable as a general partner of the foreign limited partnership solely by reason of the foreign limited partnership's transacting business in this state without registration.

(4) A foreign limited partnership, by transacting business in this state without registration appoints the secretary of state as its agent for service of process with respect to claims for relief arising out of the transaction of business in this state.

History: En. Sec. 57, Ch. 522, L. 1981.

Cross-References

Effect of transacting business without certificate, 30-13-215.

35-12-1308. Action by attorney general. The attorney general may bring an action to restrain a foreign limited partnership from transacting business in this state in violation of 35-12-1301 through 35-12-1307.

History: En. Sec. 58, Ch. 522, L. 1981; amd. Sec. 89, Ch. 370, L. 1987.

Part 14
Derivative Actions

35-12-1401. Right of action. A limited partner may bring a derivative action in the right of a limited partnership to recover a judgment in its favor if the general partners having authority to do so have refused to bring the action or an effort to cause those general partners to bring the action is not likely to succeed.

History: En. Sec. 59, Ch. 522, L. 1981.

35-12-1402. Proper plaintiff. In a derivative action, the plaintiff must be a partner at the time of bringing the action and must have been a partner at the time of the transaction of which the plaintiff complains or the plaintiff's status as a partner must have devolved by operation of law or pursuant to the terms of the partnership agreement from a person who was a partner at the time of the transaction.

History: En. Sec. 60, Ch. 522, L. 1981; amd. Sec. 32, Ch. 268, L. 1997.

35-12-1403. Pleading. In any derivative action, the complaint shall set forth with particularity the effort of the plaintiff to secure initiation of the action by a general partner having authority to do so or the reasons for not making the effort.

History: En. Sec. 61, Ch. 522, L. 1981.

35-12-1404. Expenses. If a derivative action is successful, in whole or in part, or anything is received by the plaintiff as a result of a judgment, compromise, or settlement of an action or claim, the court may award the plaintiff reasonable expenses, including reasonable attorney's fees, and shall direct him to account to the limited partnership for the remainder of the proceeds so received by him.

History: En. Sec. 62, Ch. 522, L. 1981.

CHAPTER 13
MINING PARTNERSHIPS

Part 1 — Formation

35-13-101. When a mining partnership exists.
35-13-102. Express agreement not necessary to formation.

Part 2 — Relations Between Partners and with Third Persons

35-13-201. When contract in writing is binding.
35-13-202. Owners of majority interest govern.
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Chapter Cross-References

Abuse of property held jointly or in common — action, 70-19-202.

Part 1
Formation

Part Cross-References

Formation, articles of incorporation, and bylaws of business corporations, Title 35, ch. 1, part 2.

Formation, articles of incorporation, and bylaws of nonprofit corporations, Title 35, ch. 2, part 2.

Formation of religious corporations sole, Title 35, ch. 3, part 2.

Organization of professional service corporations, Title 35, ch. 4, part 2.

Formation and operation of business trusts, Title 35, ch. 5, part 2.

Formation of limited partnerships, Title 35, ch. 12, part 6.

35-13-101. When a mining partnership exists. A mining partnership exists when two or more persons who own or acquire a mining claim for the purpose of working it and extracting the mineral therefrom actually engage in working the same.

History: En. Sec. 3350, Civ. C. 1895; re-en. Sec. 5535, Rev. C. 1907; re-en. Sec. 8050, R.C.M. 1921; Cal. Civ. C. Sec. 2511; re-en. Sec. 8050, R.C.M. 1935; R.C.M. 1947, 63-1001.

35-13-102. Express agreement not necessary to formation. An express agreement to become partners or to share the profits and losses of mining is not necessary to the formation and existence of a mining partnership. The relation arises from the ownership of shares or interests in the mine and working the same for the purpose of extracting the minerals therefrom.

History: En. Sec. 3351, Civ. C. 1895; re-en. Sec. 5536, Rev. C. 1907; re-en. Sec. 8051, R.C.M. 1921; Cal. Civ. C. Sec. 2512; re-en. Sec. 8051, R.C.M. 1935; R.C.M. 1947, 63-1002.

Part 2
Relations Between Partners and with Third Persons

Part Cross-References

Relations among partners, partnerships, and third persons, Title 35, ch. 10, parts 3 and 4.

35-13-201. When contract in writing is binding. No member of a mining partnership or other agent or manager thereof can by a contract in writing bind the partnership, except by express authority derived from the members thereof.

History: En. Sec. 3358, Civ. C. 1895; re-en. Sec. 5543, Rev. C. 1907; re-en. Sec. 8058, R.C.M. 1921; Cal. Civ. C. Sec. 2519; re-en. Sec. 8058, R.C.M. 1935; R.C.M. 1947, 63-1009.

35-13-202. Owners of majority interest govern. The decision of the members owning a majority of the shares or interest in a mining partnership binds it in the conduct of its business.

History: **En. Sec. 3359, Civ. C. 1895; re-en. Sec. 5544, Rev. C. 1907; re-en. Sec. 8059, R.C.M. 1921; Cal. Civ. C. Sec. 2520; re-en. Sec. 8059, R.C.M. 1935; R.C.M. 1947, 63-1010.**

35-13-203. Mine — partnership property. The mining ground owned and worked by partners in mining, whether purchased with partnership funds or not, is partnership property.

History: **En. Sec. 3354, Civ. C. 1895; re-en. Sec. 5539, Rev. C. 1907; re-en. Sec. 8054, R.C.M. 1921; Cal. Civ. C. Sec. 2515; re-en. Sec. 8054, R.C.M. 1935; R.C.M. 1947, 63-1005.**

35-13-204. Profits and losses — how shared. A member of a mining partnership shares in the profits and losses thereof in the proportion which the interest or share he owns in the mine bears to the whole partnership capital or whole number of shares.

History: **En. Sec. 3352, Civ. C. 1895; re-en. Sec. 5537, Rev. C. 1907; re-en. Sec. 8052, R.C.M. 1921; Cal. Civ. C. Sec. 2513; re-en. Sec. 8052, R.C.M. 1935; R.C.M. 1947, 63-1003.**

35-13-205. Lien of partner for debts due creditors. Each member of a mining partnership has a lien on the partnership property for the debts due the creditors thereof and for money advanced by him for its uses. This lien exists notwithstanding there is an agreement among the partners that it must not.

History: **En. Sec. 3353, Civ. C. 1895; re-en. Sec. 5538, Rev. C. 1907; re-en. Sec. 8053, R.C.M. 1921; Cal. Civ. C. Sec. 2514; re-en. Sec. 8053, R.C.M. 1935; R.C.M. 1947, 63-1004.**

Cross-References

Liens generally, Title 71, ch. 3, part 1.

35-13-206. Partnership not dissolved by sale of interest — purchaser becomes partner. One of the partners in a mining partnership may convey his interest in the mine and business without dissolving the partnership. The purchaser from the date of his purchase becomes a member of the partnership.

History: **En. Sec. 3355, Civ. C. 1895; re-en. Sec. 5540, Rev. C. 1907; re-en. Sec. 8055, R.C.M. 1921; Cal. Civ. C. Sec. 2516; re-en. Sec. 8055, R.C.M. 1935; R.C.M. 1947, 63-1006.**

35-13-207. Purchaser takes subject to liens — exception for good faith purchaser. A purchaser of an interest in the mining ground of a mining partnership takes it subject to the liens existing in favor of the partners for debts due all creditors thereof or advances made for the benefit of the partnership unless he purchased in good faith for a valuable consideration without notice of such lien.

History: **En. Sec. 3356, Civ. C. 1895; re-en. Sec. 5541, Rev. C. 1907; re-en. Sec. 8056, R.C.M. 1921; Cal. Civ. C. Sec. 2517; re-en. Sec. 8056, R.C.M. 1935; R.C.M. 1947, 63-1007.**

35-13-208. When purchaser takes with notice of liens. The purchaser of the interest of a partner in a mine when the partnership is engaged in working it takes with notice of all liens resulting from the relation of the partners to each other and to the creditors of the partnership.

History: **En. Sec. 3357, Civ. C. 1895; re-en. Sec. 5542, Rev. C. 1907; re-en. Sec. 8057, R.C.M. 1921; Cal. Civ. C. Sec. 2518; re-en. Sec. 8057, R.C.M. 1935; R.C.M. 1947, 63-1008.**

CHAPTER 14

RESERVED

CHAPTER 15

COOPERATIVE ASSOCIATIONS

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35-15-507. Statute of limitations.

Chapter Cross-References

Fire department relief associations, 19-18-102.

Unfair trade practices, 30-14-214, 30-14-216, 30-14-224.

Agricultural associations, Title 35, ch. 16.

Cooperative agricultural marketing associations, Title 35, ch. 17.

Livestock protective associations, Title 81, ch. 6.

Part 1
General

35-15-101. Reserved power of regulation. The legislature hereby reserves the power to prescribe such regulations and provisions governing any and all associations incorporated under this chapter as it may deem advisable. Such regulations and provisions shall be binding on associations incorporated at the time such regulations may be made, as well as on those thereafter incorporated.

History: En. Sec. 880, Civ. C. 1895; re-en. Sec. 4220, Rev. C. 1907; re-en. Sec. 6385, R.C.M. 1921; re-en. Sec. 6385, R.C.M. 1935; R.C.M. 1947, 14-211.

35-15-102. Requirements of chapter exclusive. No association organized under this chapter shall be required to do or perform anything not specially required herein in order to become a corporation, or to continue its business as such.

History: En. Sec. 4, Ch. 83, L. 1915; re-en. Sec. 6389, R.C.M. 1921; re-en. Sec. 6389, R.C.M. 1935; R.C.M. 1947, 14-215(part).

Cross-References

Effect of merger or consolidation, 35-15-505.

35-15-103. Powers. (1) Associations formed under this chapter shall be bodies corporate and politic for the period for which they are organized, not exceeding 40 years.

(2) Associations formed under this chapter may:

(a) sue and be sued;

(b) have a common seal which they may alter or renew at pleasure;

(c) own, possess, and enjoy so much real and personal property as shall be necessary for the transaction of their business and sell and dispose of the same; and

(d) borrow money and pledge their property, both real and personal, to secure the payment thereof.

(3) Associations formed under this chapter shall have and exercise all powers necessary and requisite to carry into effect the objects for which they may be formed and such as are usually exercised by cooperative associations, subject to all duties, restrictions, and liabilities set forth in the general laws in relation to similar corporations, except so far as the same may be limited or enlarged by this chapter.

History: En. Sec. 874, Civ. C. 1895; re-en. Sec. 4214, Rev. C. 1907; re-en. Sec. 6379, R.C.M. 1921; Cal. Civ. C. Sec. 653b; re-en. Sec. 6379, R.C.M. 1935; R.C.M. 1947, 14-205.

Cross-References

Effect of merger or consolidation, 35-15-505.

Part 2
Formation — Articles of Incorporation — Bylaws

Part Cross-References

Formation, articles of incorporation, and bylaws of business corporations, Title 35, ch. 1, part 2.

Formation, articles of incorporation, and bylaws of nonprofit corporations, Title 35, ch. 2, part 2.

Formation of religious corporations sole, Title 35, ch. 3, part 2.

Organization of professional service corporations, Title 35, ch. 4, part 2.

Formation and operation of business trusts, Title 35, ch. 5, part 2.

Formation of limited partnerships, Title 35, ch. 12, part 6.

35-15-201. Incorporation. (1) Whenever any number of persons, not less than three or more than seven, may desire to become incorporated as a cooperative association for the purpose of trade or of prosecuting any branch of industry or the purchase and distribution of commodities for consumption or in the borrowing or lending of money among members for industrial purposes, they shall make a statement to that effect under their hands setting forth:

(a) the name of the proposed corporation;

(b) its capital stock;

(c) its location;

(d) the duration of the association; and

(e) the particular branch or branches of industry which they intend to prosecute.

(2) In addition to provisions required in subsection (1), the statement of incorporation may also contain provisions not inconsistent with law regarding liability as set forth in 35-1-216.

(3) The statement shall be filed in the office of the secretary of state as the articles of incorporation of the association. The secretary of state shall thereupon issue to such persons a license as commissioners to open books for subscription to the capital stock of such corporation, at such time and place as they may determine, for which he shall receive the fee of $20.

History: En. Sec. 870, Civ. C. 1895; re-en. Sec. 4210, Rev. C. 1907; re-en. Sec. 6375, R.C.M. 1921; Cal. Civ. C. Sec. 653b; re-en. Sec. 6375, R.C.M. 1935; amd. Sec. 1, Ch. 273, L. 1955; amd. Sec. 2, Ch. 117, L. 1961; R.C.M. 1947, 14-201; amd. Sec. 31, Ch. 174, L. 1983; amd. Sec. 3, Ch. 559, L. 1987; amd. Sec. 207, Ch. 368, L. 1991.

35-15-202. Limit on subscription or control of common stock — one share per person. No person shall be permitted to subscribe for or control or own more or less than one share of the common stock of such association.

History: En. Sec. 871, Civ. C. 1895; re-en. Sec. 4211, Rev. C. 1907; re-en. Sec. 6376, R.C.M. 1921; amd. Sec. 1, Ch. 135, L. 1933; re-en. Sec. 6376, R.C.M. 1935; R.C.M. 1947, 14-202.

Cross-References

Assignment of stock, 35-15-403.

35-15-203. First meeting. As soon as 10 or more shares of the capital stock shall be subscribed, the commissioners shall convene a meeting of the subscribers for the purpose of electing directors, adopting bylaws, and transacting such other business as shall properly come before them. Notice thereof shall be given to each subscriber by depositing same in the post office, properly addressed, at least 10 days before the time fixed, stating the object, time, and place of said meeting.

History: En. Sec. 872, Civ. C. 1895; re-en. Sec. 4212, Rev. C. 1907; re-en. Sec. 6377, R.C.M. 1921; re-en. Sec. 6377, R.C.M. 1935; amd. Sec. 2, Ch. 273, L. 1955; amd. Sec. 1, Ch. 342, L. 1973; R.C.M. 1947, 14-203(part).

Cross-References

Stockholders' meetings, 35-15-302.

35-15-204. Issuance of certificate of organization — effect. (1) The commissioners shall make a full report of their proceedings, including therein a copy of the notice provided for in the preceding section, a copy of the subscription list, a copy of the bylaws adopted by the association, and the names of the directors elected and their respective terms of office, which report shall be executed by at least a majority of the commissioners and shall be filed in the office of the secretary of state. The secretary of state shall thereupon issue a certificate of the complete organization of the association, making a part thereof a copy of all papers filed in his office in and about the organization and duly authenticated under his hand and seal of the state, for which he shall receive the sum of $20, and thereupon a certified copy of said certificate shall be filed in the office of the county clerk in which the principal office of the association is located.

(2) Upon the filing of said certified copy, the association shall be deemed to be fully organized and may proceed to business.

History: En. Sec. 873, Civ. C. 1895; re-en. Sec. 4213, Rev. C. 1907; re-en. Sec. 6378, R.C.M. 1921; re-en. Sec. 6378, R.C.M. 1935; amd. Sec. 3, Ch. 273, L. 1955; amd. Sec. 3, Ch. 117, L. 1961; R.C.M. 1947, 14-204(part); amd. Sec. 32, Ch. 174, L. 1983.

Cross-References

Issuance of certificate of incorporation for agricultural associations, 35-16-204.

Receipt of certificate of incorporation for cooperative agricultural marketing associations, 35-17-205.

35-15-205. Amendment of articles of incorporation. At any time after the filing of the certificate of complete organization, the articles of incorporation may be amended. Any amendment of the articles of incorporation shall first be approved by two-thirds of the directors and then adopted by a vote of not less than two-thirds of those stockholders voting thereon at any regular meeting of the stockholders or at a special meeting of the stockholders called for that purpose. A certificate setting forth such amendment shall be executed on behalf of the association by its president or vice-president and its corporate seal affixed thereto and attested by its secretary. Such certificate shall be filed in the office of the secretary of state who shall thereupon issue a certificate of amendment of the articles of incorporation, for which he shall receive the sum of $10, and thereupon a certified copy of such certificate shall be filed in the office of the county clerk in which the principal office of the association is located.

History: En. Sec. 873, Civ. C. 1895; re-en. Sec. 4213, Rev. C. 1907; re-en. Sec. 6378, R.C.M. 1921; re-en. Sec. 6378, R.C.M. 1935; amd. Sec. 3, Ch. 273, L. 1955; amd. Sec. 3, Ch. 117, L. 1961; R.C.M. 1947, 14-204(part); amd. Sec. 33, Ch. 174, L. 1983.

Cross-References

Amendments of articles of incorporation of cooperative agricultural marketing associations, 35-17-203.

Amendments of articles of incorporation of rural cooperative utilities, 35-18-204, 35-18-501.

35-15-206. Bylaws. All bylaws shall be adopted by the stockholders of the association and may be amended at a meeting of the stockholders by a majority of those stockholders voting thereon or as otherwise provided in the bylaws. Amendments of the bylaws shall be fully effective upon adoption as provided herein and need not be filed in the office of the secretary of state or county clerk.

History: En. Sec. 875, Civ. C. 1895; re-en. Sec. 4215, Rev. C. 1907; re-en. Sec. 6380, R.C.M. 1921; re-en. Sec. 6380, R.C.M. 1935; amd. Sec. 4, Ch. 273, L. 1955; R.C.M. 1947, 14-206(part).

35-15-207 through 35-15-210 reserved.

35-15-211. Filing of facsimile copy. (1) The secretary of state may treat a facsimile copy of a document that is required to be filed under this chapter and the signatures on the facsimile copy in the same manner as an original for purposes of this chapter. If all other requirements are met, the date of filing relates back to the date of receipt of the facsimile copy.

(2) A person who files a false document by facsimile copy is liable to the party aggrieved for three times the amount of damages resulting from the filing of the false document.

History: En. Sec. 4, Ch. 273, L. 1989; amd. Sec. 10, Ch. 290, L. 1997.

Cross-References

Assumed business name — filing of facsimile copy, 30-113-221.

Part 3

Shareholders, Directors, and Officers

Part Cross-References

Directors and officers of business corporations, Title 35, ch. 1, part 4.

Directors and officers of nonprofit corporations, Title 35, ch. 2, part 4.

Members and directors of agricultural associations, Title 35, ch. 16, part 3.

Members, directors, and officers of cooperative agricultural marketing associations, Title 35, ch. 17, part 3.

Members, trustees, and officers of rural cooperative utilities, Title 35, ch. 18, part 3.

35-15-301. Increase of membership. An association licensed to operate under this chapter may, by a majority of its stockholders, increase its membership in such manner as may be provided in its bylaws, not inconsistent with any of the provisions of this chapter.

History: En. Sec. 879, Civ. C. 1895; re-en. Sec. 4219, Rev. C. 1907; re-en. Sec. 6384, R.C.M. 1921; re-en. Sec. 6384, R.C.M. 1935; R.C.M. 1947, 14-210.

35-15-302. Stockholders' meetings — place — time — call — notice — quorum. (1) Unless the bylaws provide otherwise, stockholders' meetings shall be held at the principal office or such other place as the board may determine.

(2) An annual stockholders' meeting shall be held at the time fixed in or pursuant to the bylaws. In the absence of a bylaw provision, such meeting shall be held within 6 months after the close of the fiscal year at the call of the president or board.

(3) Special stockholders' meetings may be called by the president, board, or stockholders having one-fifth of the votes entitled to be cast at such meeting.

(4) Written notice stating the place, day, and hour, and in case of a special stockholders' meeting the purposes for which the meeting is called, shall be given not less than 7 or more than 30 days before the meeting at the direction of the person calling the meeting.

(5) At any meeting at which stockholders are to be represented by delegates, notice to such stockholders may be given by notifying such delegates and their alternates. Notice may consist of a notice to all stockholders or may

be in the form of an announcement at the meeting at which such delegates or alternates are elected.

(6) A quorum at a regular or special meeting shall be as provided in the association's articles or bylaws. If the articles or bylaws do not define a quorum, 10% of the first 100 stockholders plus 5% of any additional stockholders present in person shall constitute a quorum. Stockholders represented by signed vote may be counted in computing a quorum only on those questions as to which the signed vote is taken.

History: En. Sec. 872, Civ. C. 1895; re-en. Sec. 4212, Rev. C. 1907; re-en. Sec. 6377, R.C.M. 1921; re-en. Sec. 6377, R.C.M. 1935; amd. Sec. 2, Ch. 273, L. 1955; amd. Sec. 1, Ch. 342, L. 1973; R.C.M. 1947, 14-203(2).

Cross-References

First meeting of subscribers, 35-15-203.

Assignment of stock, 35-15-403.

35-15-303. Stockholder voting by mail. At any regularly called general or special meeting of the stockholders of cooperative associations, a written vote received by mail from any absent stockholder and signed by him may be read in such meeting and shall be equivalent to a vote of each of the stockholders so signing, provided he has been previously notified in writing of the exact motion or resolution upon which such vote is taken and a copy of the same is forwarded with and attached to the vote so mailed by him.

History: En. Sec. 1, Ch. 83, L. 1915; re-en. Sec. 6386, R.C.M. 1921; re-en. Sec. 6386, R.C.M. 1935; R.C.M. 1947, 14-212.

Cross-References

Assignment of stock, 35-15-403.

35-15-304. Directors and officers. (1) Directors of associations organized under this chapter shall be elected by the stockholders and hold their office for such period of time as shall be provided in the bylaws.

(2) The board of directors, who shall exercise the corporate powers invested in such association, shall consist of not less than three as fixed by the bylaws of the association.

(3) The officers of the association shall be a president, vice-president, secretary, and treasurer, and such others as may be designated by the bylaws to be elected by the stockholders or by the board of directors, as provided by the bylaws.

(4) Only stockholders shall be elected directors, and only directors shall be elected president or vice-president. The offices of secretary and treasurer may be combined and the combined office designated as secretary-treasurer.

(5) The bylaws may provide that the territory in which the association has stockholders shall be divided into districts and that the directors shall be elected according to such districts, in which case the bylaws may specify the number of directors to be elected by each district and the manner and method of reapportioning the directors and of redistricting the territory covered by the association. The bylaws may provide that primary elections be held in each district by the stockholders residing therein to elect the directors apportioned to such districts with the result of all such primary elections to be ratified by the stockholders at the next regular meeting of the association.

History: (1)En. Sec. 872, Civ. C. 1895; re-en. Sec. 4212, Rev. C. 1907; re-en. Sec. 6377, R.C.M. 1921; re-en. Sec. 6377, R.C.M. 1935; amd. Sec. 2, Ch. 273, L. 1955; amd. Sec. 1, Ch. 342, L. 1973; Sec. 14-203, R.C.M. 1947; (2) thru (5)En. Sec. 875, Civ. C. 1895; re-en. Sec. 4215, Rev. C. 1907; re-en. Sec. 6380, R.C.M. 1921; re-en. Sec. 6380, R.C.M. 1935; amd. Sec. 4, Ch. 273, L. 1955; Sec. 14-206, R.C.M. 1947; R.C.M. 1947, 14-203(part), 14-206(part).

35-15-305. Filing required to have benefit of certain provisions. All cooperative corporations, companies, or associations organized before March 5, 1915, and doing business under prior statutes or which have attempted to so organize and do business shall have the benefit of 35-15-303, 35-15-411, and 35-15-412 and be bound thereby on filing with the secretary of state a written declaration, executed by the president and secretary, to the effect that said cooperative company or association has by a majority vote of its stockholders decided to accept the benefits of and to be bound by such provisions.

History: En. Sec. 4, Ch. 83, L. 1915; re-en. Sec. 6389, R.C.M. 1921; re-en. Sec. 6389, R.C.M. 1935; R.C.M. 1947, 14-215(part); amd. Sec. 34, Ch. 174, L. 1983.

Part 4

Shares, Dividends, and Distributions

Part Cross-References

Shares of business corporations, Title 35, ch. 1, part 6.

Stockholder provisions of agricultural associations, Title 35, ch. 16, part 2.

Stock of cooperative agricultural marketing associations, 35-17-302.

Conversion of corporation shares into rural cooperative utility memberships, 35-18-206.

35-15-401. Classes of stock. (1) The shares of stock shall not be less than $10 or more than $5,000 per share and may be made payable in installments.

(2) Every cooperative association may divide its shares of stock into preferred and common stock. The holders of preferred stock shall have no voting power and shall not participate in the management and affairs of the association, and the owners thereof shall share in the profits of the association to the extent of not exceeding 6% per annum on the par value thereof. The common stock may be divided into classes of different values, and the owners thereof shall share in the profits of the association in proportion to the par value of their shares. However, the owners of common stock in the different classes shall have the same power and vote in the association.

(3) The stock heretofore issued in classes of different par values by any cooperative association is hereby legalized and made valid.

History: En. Sec. 876, Civ. C. 1895; re-en. Sec. 4216, Rev. C. 1907; amd. Sec. 1, Ch. 3, L. 1909; re-en. Sec. 6381, R.C.M. 1921; amd. Sec. 2, Ch. 135, L. 1933; re-en. Sec. 6381, R.C.M. 1935; R.C.M. 1947, 14-207(part).

35-15-402. Forfeiture of stock for nonpayment — reissuance. Forfeiture of the stock for nonpayment of installments may be provided for in the bylaws, and whenever a share of stock is forfeited, such share shall become the property of the association and may be reissued to any person already a holder of common stock; but any proceeds received by the association from such reissue, over and above the amount due on said share, shall be paid to the delinquent shareholder.

History: En. Sec. 876, Civ. C. 1895; re-en. Sec. 4216, Rev. C. 1907; amd. Sec. 1, Ch. 3, L. 1909; re-en. Sec. 6381, R.C.M. 1921; amd. Sec. 2, Ch. 135, L. 1933; re-en. Sec. 6381, R.C.M. 1935; R.C.M. 1947, 14-207(part).

35-15-403. Assignment of stock. No assignment of stock shall be made to any person who already owns stock, except by the consent of the board of directors, but stock may be assigned to the association at any time with the consent of the directors. On no question shall a stockholder have more than one vote. Every assignment of stock on which there remains any portion unpaid shall be recorded in the books of the association, and each stockholder shall be jointly and severally liable with the association for the debts of the association to the extent of the amount which shall be unpaid upon the share held by him. No assignor shall be released from any such indebtedness by reason of any assignment of his share but shall remain jointly liable therefor with the assignee.

History: En. Sec. 877, Civ. C. 1895; re-en. Sec. 4217, Rev. C. 1907; re-en. Sec. 6382, R.C.M. 1921; re-en. Sec. 6382, R.C.M. 1935; amd. Sec. 5, Ch. 273, L. 1955; R.C.M. 1947, 14-208.

Cross-References

Limit on subscription or control of common stock — one share per person, 35-15-202.

35-15-404. Share exempt from attachment and execution — sale upon death of member. (1) The share, not exceeding the par value of $500, of each member shall be exempt from seizure on attachment or sale under execution.

(2) Upon his death the share shall be sold by the association and the proceeds after deducting all liabilities to the association shall be delivered to his heirs.

History: En. Sec. 878, Civ. C. 1895; re-en. Sec. 4218, Rev. C. 1907; amd. Sec. 2, Ch. 3, L. 1909; re-en. Sec. 6383, R.C.M. 1921; re-en. Sec. 6383, R.C.M. 1935; R.C.M. 1947, 14-209.

Cross-References

Property exempt from execution, Title 25, ch. 13, part 6.

35-15-405 through 35-15-410 reserved.

35-15-411. Disposal of earnings — dividends — reserve fund — educational fund. The directors of a cooperative association, subject to revision by the stockholders at a general or special meeting, may apportion the earnings of the association by first paying dividends on the paid-up capital stock, not exceeding 6% per annum on the par value thereof; from the remaining funds, if any, accessible for dividend purposes, not less than 5% of the net profits for a reserve fund until an amount has accumulated in said reserve fund amounting to 30% of the paid-up capital stock; and from the balance, if any, 5% for an educational fund to be used for teaching cooperation; and the remaining of said profits, if any, by uniform dividends upon the amount of purchases of patrons and upon the wages and for salaries of employees, the amount of such uniform dividends on the amount of their purchases, which may be credited to the account of such patrons on account of capital stock of the association; but in production associations such as creameries, canneries, elevators, factories, and the like, dividends shall be on raw material delivered instead of on goods purchased. In case the association is both a selling and a productive concern, the dividends may be on both raw material delivered and on goods purchased by patrons.

History: En. Sec. 2, Ch. 83, L. 1915; re-en. Sec. 6387, R.C.M. 1921; amd. Sec. 3, Ch. 135, L. 1933; re-en. Sec. 6387, R.C.M. 1935; R.C.M. 1947, 14-213.

Cross-References

Filing required to have benefit of certain provisions, 35-15-305.

35-15-412. When distribution of profits and earnings to be made — dissolution for failure to pay dividend for five years. (1) The profits or net earnings of such associations shall be distributed to those entitled thereto at such times as the bylaws shall prescribe, which shall be as often as once in 12 months.

(2) If such associations for 5 consecutive years shall fail to declare a dividend upon the shares of its paid-up capital, the holders of the majority of the par value of the issued and outstanding capital stock, by petition setting forth such fact, may apply to the district court of the county wherein is situated its principal place of business in this state for its dissolution. If upon hearing the allegations of the petition are found to be true, the court may adjudge a dissolution of the association.

History: En. Sec. 3, Ch. 83, L. 1915; re-en. Sec. 6388, R.C.M. 1921; re-en. Sec. 6388, R.C.M. 1935; R.C.M. 1947, 14-214.

Cross-References

Filing required to have benefit of certain provisions, 35-15-305.

Part 5

Merger, Consolidation, and Sale of Assets

35-15-501. Merger or consolidation authorized. It shall be lawful for two or more cooperative associations formed or which may be hereafter formed under the laws of the state of Montana to merge or consolidate with each other or with one or more associations incorporated under the laws of another state or states relating to organization of cooperative associations by complying with the provisions of this chapter or with the applicable laws of the state where the surviving or new association has its principal place of business.

History: En. Sec. 1, Ch. 140, L. 1917; re-en. Sec. 6390, R.C.M. 1921; re-en. Sec. 6390, R.C.M. 1935; amd. Sec. 2, Ch. 342, L. 1973; R.C.M. 1947, 14-216(part).

35-15-502. Plan for merger or consolidation. Before an association may merge or consolidate with any other association, a written plan of merger or consolidation shall be prepared by the board of directors of one or both associations, by a committee appointed for that purpose by the board of directors of one or both associations, or by a committee composed of at least 10% of the stockholders of one of the associations concerned. Such plan shall set forth all the terms of the merger or consolidation and the proposed effect thereof on each of the stockholders of the associations concerned. In the case of consolidation, the plan shall also contain a copy of the proposed articles for the new association to be formed.

History: En. Sec. 1, Ch. 140, L. 1917; re-en. Sec. 6390, R.C.M. 1921; re-en. Sec. 6390, R.C.M. 1935; amd. Sec. 2, Ch. 342, L. 1973; R.C.M. 1947, 14-216(1).

35-15-503. Meeting to consider plan — notice. (1) Notice of the proposed plan and, in the case of consolidation, of the proposed new articles shall be mailed to each stockholder of the associations to be affected thereby.

(2) The notice shall advise the stockholders of each association of the time and place each association shall meet, at which time the proposal shall be considered and voted upon by each association. The meetings shall be held not less than 30 or more than 60 days after the mailing of notice. The plan shall be

considered adopted if a quorum is present and two-thirds of those voting vote in its favor.

History: En. Sec. 1, Ch. 140, L. 1917; re-en. Sec. 6390, R.C.M. 1921; re-en. Sec. 6390, R.C.M. 1935; amd. Sec. 2, Ch. 342, L. 1973; R.C.M. 1947, 14-216(2), (3).

35-15-504. Filing of documents of merger or consolidation — effective date. (1) Within 30 days after the merger or consolidation plan has been adopted, documents of merger or consolidation setting forth the plan and the manner of adoption thereof shall be signed by the president or vice-president and by the secretary or assistant secretary of each association merging or consolidating and filed with the clerk and recorder of the county in which the principal office of the new or surviving association is located if the office is in Montana and with the Montana secretary of state.

(2) If the new or surviving association has its principal office in Montana, the merger or consolidation shall become effective as of the date of filing with the Montana secretary of state. If its principal office is outside the state of Montana, the merger or consolidation shall become effective upon full compliance with the laws of the state in which its principal office is located. If there is a merger, the articles and bylaws of the surviving association are amended to the extent provided in the documents setting forth the plan of merger.

History: En. Sec. 1, Ch. 140, L. 1917; re-en. Sec. 6390, R.C.M. 1921; re-en. Sec. 6390, R.C.M. 1935; amd. Sec. 2, Ch. 342, L. 1973; R.C.M. 1947, 14-216(4); amd. Sec. 35, Ch. 174, L. 1983.

35-15-505. Effect of merger or consolidation — rights and obligations — rights of creditors not impaired. (1) After the effective date, the associations which are parties to the plan become a single association. In the case of a merger, the surviving association is that association so designated in the plan. In the case of a consolidation, the new association is the association provided for in the plan. The separate existence of all associations which are parties to the plan, except the surviving or new association, then ceases.

(2) The surviving or new association possesses all the rights and all the property of each of the individual associations and is responsible for all their obligations. Title to any property is vested in the surviving or new association with no reversion or impairment thereof caused by the merger or consolidation. No right of any creditor may be impaired by the merger or consolidation without his consent.

(3) Nothing in this part shall be construed to impair the obligation of any contract to which any of such constituents was a party at the date of said consolidation.

History: (1), (2)En. Sec. 1, Ch. 140, L. 1917; re-en. Sec. 6390, R.C.M. 1921; re-en. Sec. 6390, R.C.M. 1935; amd. Sec. 2, Ch. 342, L. 1973; Sec. 14-216, R.C.M. 1947; (3)En. Sec. 4, Ch. 140, L. 1917; re-en. Sec. 6393, R.C.M. 1921; re-en. Sec. 6393, R.C.M. 1935; Sec. 14-219, R.C.M. 1947; R.C.M. 1947, 14-216(6), 14-219.

35-15-506. Sale or disposition of assets. At any meeting the stockholders of a cooperative association may authorize the disposition or sale of all or substantially all of the association's assets if notice that such disposition or sale will be considered at such meeting has been given to all persons entitled to vote thereon and if disposition or sale is approved by two-thirds of those entitled to vote thereon voting at the meeting.

History: **En. Sec. 1, Ch. 140, L. 1917; re-en. Sec. 6390, R.C.M. 1921; re-en. Sec. 6390, R.C.M. 1935; amd. Sec. 2, Ch. 342, L. 1973; R.C.M. 1947, 14-216(5).**

Cross-References

Dissolution and liquidation of business corporations, Title 35, ch. 1, part 9.

Dissolution and liquidation of nonprofit corporations, Title 35, ch. 2, part 7.

Involuntary corporate dissolution, Title 35, ch. 6.

Dissolution and winding up of partnerships in general, Title 35, ch. 10, part 6.

Dissolution of limited partnerships, Title 35, ch. 12, part 12.

Sale or disposition of assets of cooperative agricultural marketing associations, 35-17-506.

Dissolution of rural cooperative utilities, 35-18-404, 35-18-405.

35-15-507. Statute of limitations. No action may be maintained to invalidate any sale, merger, or consolidation taken pursuant to this chapter because of the manner of its adoption unless the action is commenced within 2 years after the date of filing same.

History: **En. Sec. 1, Ch. 140, L. 1917; re-en. Sec. 6390, R.C.M. 1921; re-en. Sec. 6390, R.C.M. 1935; amd. Sec. 2, Ch. 342, L. 1973; R.C.M. 1947, 14-216(7).**

CHAPTER 16

AGRICULTURAL ASSOCIATIONS

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35-16-405. Execution and record of mortgage — lien.
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Chapter Cross-References

Unfair trade practices, 30-14-214, 30-14-216, 30-14-224.

Cooperative associations, Title 35, ch. 15.

Cooperative agricultural marketing associations, Title 35, ch. 17.

Conservation districts, Title 76, ch. 15.

Part 1

General

35-16-101. Applicability of general corporate law. Except as otherwise herein specifically provided, corporations or districts organized under the provisions hereof shall be governed and controlled by the laws relative to corporations generally.

History: En. Sec. 12, Art. 3, Ch. 152, L. 1921; re-en. Sec. 6425, R.C.M. 1921; re-en. Sec. 6425, R.C.M. 1935; R.C.M. 1947, 14-329.

35-16-102. Errors in land description or names not to affect proceedings or jurisdiction of court. Mere error or omission in the description of any lands or in the names of any of the holders of title or evidence of title to lands shall not operate to render invalid any proceedings hereunder or to deprive the district court of the subject matter unless such error or omission shall cause substantial injury.

History: En. Sec. 10, Art. 3, Ch. 152, L. 1921; re-en. Sec. 6423, R.C.M. 1921; re-en. Sec. 6423, R.C.M. 1935; R.C.M. 1947, 14-327.

35-16-103. Order of district court final — appeal. Whenever under the provisions hereof any application is permitted to be made to the district court or appeal allowed thereto, the action of the district court upon such application or appeal shall be final unless appealed from in accordance with Title 25 within 60 days from and after the date of the entry of the order or judgment.

History: En. Sec. 11, Art. 3, Ch. 152, L. 1921; re-en. Sec. 6424, R.C.M. 1921; re-en. Sec. 6424, R.C.M. 1935; R.C.M. 1947, 14-328.

Part 2

Formation

Part Cross-References

Formation, articles of incorporation, and bylaws of business corporations, Title 35, ch. 1, part 2.

Shares of business corporations, Title 35, ch. 1, part 6.

Formation, articles of incorporation, and bylaws of nonprofit corporations, Title 35, ch. 2, part 2.

Formation of religious corporations sole, Title 35, ch. 3, part 2.

Organization of professional service corporations, Title 35, ch. 4, part 2.

Formation and operation of business trusts, Title 35, ch. 5, part 2.

Formation of limited partnerships, Title 35, ch. 12, part 6.

Formation of mining partnerships, Title 35, ch. 13, part 1.

Formation, articles of incorporation, and bylaws of cooperative associations, Title 35, ch. 15, part 2.

Shares of cooperative associations, Title 35, ch. 15, part 4.

Formation of cooperative agricultural marketing associations, Title 35, ch. 17, part 2.

Stock of cooperative agricultural marketing associations, 35-17-302.

Formation, articles, and bylaws of rural cooperative utilities, Title 35, ch. 18, part 2.

Conversion of corporation shares into rural cooperative utility memberships, 35-18-206.

35-16-201. Who may incorporate — purposes of incorporation. At any time after March 5, 1921, any 10 or more holders of title or evidence of title to agricultural, horticultural, or farm lands in this state of an aggregate value of not less than $75,000 who may desire to form a company or district for the purpose of promoting or improving the production, processing, storing, warehousing, or marketing of any or all agricultural, horticultural, or farm or dairying products of the respective petitioners therefor may incorporate themselves into an agricultural corporation or cooperative agricultural district.

History: En. Sec. 1, Art. 1, Ch. 152, L. 1921; re-en. Sec. 6397, R.C.M. 1921; re-en. Sec. 6397, R.C.M. 1935; R.C.M. 1947, 14-301.

35-16-202. Petition for incorporation — contents and filing — bond. (1) Such persons must prepare, sign, acknowledge, and file a petition with the clerk of the district court of the county in which the lands or the greater portion of the lands included in the petition are situate, such petition to state:

(a) the name of the corporation or district proposed to be formed;

(b) the purpose for which it is formed;

(c) the place where its principal business is to be transacted;

(d) the number of its directors or trustees, which shall not be less than three, and the names and residences of those who are selected for the first 3 months and until their successors are elected and qualified. Such directors or trustees shall at all times be resident freeholders in the state of Montana.

(e) the names and addresses of the petitioners applying for such incorporation or district, with a description of the lands which each owns and proposed to be submitted to said corporation or district and the character of the same and their production, also a consent of the owners to submit the lands to the provisions hereof;

(f) the assessed valuation of the land;

(g) the term for which it is to exist, not exceeding 40 years;

(h) if shares, acres, production, or other evidences of membership are to be used, the basis for issuing the same in either value, acreage, or production.

(2) In addition to provisions required in subsection (1), the petition for incorporation may also contain provisions not inconsistent with law regarding liability as set forth in 35-1-216.

(3) Such petition shall be accompanied by a map giving location of the lands sought to be included in such corporation or district, nothing herein to be construed as requiring such lands to be contiguous.

(4) A bond in the sum of $1,000 to be approved by the clerk, conditioned for the payment of all costs incurred in the creation of such corporation or district, shall be filed with the petition.

History: **En. Sec. 2, Art. 1, Ch. 152, L. 1921; re-en. Sec. 6398, R.C.M. 1921; re-en. Sec. 6398, R.C.M. 1935; R.C.M. 1947, 14-302; amd. Sec. 4, Ch. 559, L. 1987; amd. Sec. 208, Ch. 368, L. 1991.**

Cross-References

Directors — number — powers, 35-16-315.

35-16-203. Notice of hearing of petition. Upon the filing of such petition, the clerk of the district court wherein the same shall be filed shall set the same for hearing before said court at a time not less than 10 or more than 20 days from the date of filing such petition and shall cause notice of such setting to be mailed or delivered to each of the persons purporting to be signers thereon not less than 10 days before such hearing and post it in three public places in said county.

History: **En. Sec. 3, Art. 1, Ch. 152, L. 1921; re-en. Sec. 6399, R.C.M. 1921; re-en. Sec. 6399, R.C.M. 1935; R.C.M. 1947, 14-303.**

35-16-204. Hearing of petition — findings of court — issuance of certificate of incorporation — effect of issuance. (1) At the time specified in the notice of hearing, a district judge of the state of Montana shall in open court hear said petition and the evidence offered in support thereof and determine whether or not the requirements of this chapter have been complied with. If upon such hearing or adjournments thereof as the court may order, the court does find that the petition substantially complies with the requirements of this chapter and is true in all particulars, the court shall so find and in open court shall enter upon its minutes and upon said petition or attach thereto its findings and order to the effect that said petition complies with the requirements of this chapter and is true and correct in all particulars as therein set forth and its statements are supported by proper proof and that such corporation or district is entitled to be created and become a body corporate.

(2) A duly certified copy of which petition, with the court's order or any endorsements thereon, shall be filed with the secretary of state of the state of Montana who shall upon such filing issue a certificate of incorporation under the seal of the state of Montana. Duly certified copies of the petition, with the court's order or endorsements thereon, shall also be filed with the county clerk and recorder of each county in which said corporation or district shall thereafter own or hold property or have property-holding memberships.

(3) Upon the issuance of such certificate, every corporation or district organized hereunder is a quasi-public corporation for the promotion of public welfare, with all of the powers and authority of bodies corporate under the corporation laws of the state of Montana.

History: **En. Sec. 4, Art. 1, Ch. 152, L. 1921; re-en. Sec. 6400, R.C.M. 1921; re-en. Sec. 6400, R.C.M. 1935; R.C.M. 1947, 14-304.**

Cross-References

Issuance of certificate of organization for cooperative associations, 35-15-204.

Receipt of certificate of incorporation for cooperative agricultural marketing associations, 35-17-205.

35-16-205. First meeting — notice. Within 30 days after the issuance of a certificate of incorporation, the persons named and designated in the petition to be directors or trustees for the first 3 months shall cause a written notice to be mailed or delivered to each and every signer of the petition of a proposed first meeting of said corporation or district for the purpose of adopting a common seal, adopting bylaws, and providing for the issuance of stock or other evidences of membership of the members thereof and for the transaction of such other business as may properly come before a meeting of the stockholders or members of a corporation or district formed for the purposes named in the petition.

History: En. Sec. 5, Art. 1, Ch. 152, L. 1921; re-en. Sec. 6401, R.C.M. 1921; re-en. Sec. 6401, R.C.M. 1935; R.C.M. 1947, 14-305.

35-16-206. Bylaws to be adopted at first meeting. Every corporation or district formed under this chapter must, by majority action at its organization meeting after incorporation, adopt a code of bylaws for its government, not inconsistent with the constitution and laws of this state.

History: En. Sec. 1, Art. 2, Ch. 152, L. 1921; re-en. Sec. 6406, R.C.M. 1921; re-en. Sec. 6406, R.C.M. 1935; R.C.M. 1947, 14-310.

35-16-207. Bylaws — contents. The bylaws, where no other provision is specially made, may provide for:

(1) the time, place, and manner of calling and conducting meetings of stockholders or members;

(2) the number of stockholders or members or quantity of units of membership in acres, lands, or production, as shall constitute a quorum;

(3) the mode of voting at stockholder's meetings and the method of voting by proxy, provided that the same shall not be inconsistent with any of the provisions hereof or the laws of this state;

(4) the number of directors of the corporation or district and the time of the annual election of directors and the mode and manner of giving notice thereof;

(5) the officers, the manner of their election, their duties, and tenure;

(6) the directors having the power to sell, lease, mortgage, hypothecate, or otherwise dispose of the corporate assets of the corporation or district or any part thereof, as distinguished from membership lands;

(7) the manner of creating subdivisions or subdistricts, by geographical location or otherwise, for local groups or subdivisions of the corporation or district, as may promote the objects of the corporation or district generally or the welfare of the membership in the particular subdivision or subdistrict; and may provide for local boards of directors or executive committees representing the board of directors to manage the affairs of the subdivision or subdistrict thus created, subject to the direction and approval of the board of directors of the corporation or district.

History: En. Sec. 2, Art. 2, Ch. 152, L. 1921; re-en. Sec. 6407, R.C.M. 1921; re-en. Sec. 6407, R.C.M. 1935; R.C.M. 1947, 14-311.

35-16-208. Bylaws — recording and amendment. (1) The bylaws and all amendments and additions thereto shall be recorded.

(2) The bylaws may be repealed or amended or new bylaws may be adopted at the annual meeting or at any other meeting of the members called for that purpose by the directors, by a vote representing two-thirds of the stock or other evidences of membership or by two-thirds of the members. The written assent of the holders of two-thirds of the stock or other evidences of membership or of two-thirds of the members is effective to repeal or amend a bylaw or to adopt additional bylaws. The power to repeal and amend the bylaws and to adopt new bylaws may, by a similar vote at any such meeting or by similar written assent,

be delegated to the board of directors or trustees. That power, when delegated, may be revoked by a similar vote at any such meeting of the members.

History: **En. Sec. 3, Art. 2, Ch. 152, L. 1921; re-en. Sec. 6408, R.C.M. 1921; re-en. Sec. 6408, R.C.M. 1935; amd. Sec. 8, Ch. 62, L. 1977; R.C.M. 1947, 14-312.**

Cross-References

Directors — number — powers, 35-16-315.

35-16-209. Creation of subdivisions or subdistricts. Any corporation or district organized under the provisions hereof shall have the power to create subdivisions or subdistricts of said corporation or district, by geographical or other location, as shall best subserve the purposes of the corporation or district or the welfare of the membership of the corporation or district residing in the proposed subdivision or subdistrict, provided any property owned or acquired by the subdivision or subdistrict thus created shall at all times be the property of the corporation or district and its members and membership lands subject to the objects, purposes, and liabilities of the corporation or district, as herein provided.

History: **En. Sec. 8, Art. 1, Ch. 152, L. 1921; re-en. Sec. 6404, R.C.M. 1921; re-en. Sec. 6404, R.C.M. 1935; R.C.M. 1947, 14-308.**

35-16-210. Existing associations — reorganization under this chapter. (1) Any cooperative or other corporation, association, society, or group of individuals on or before March 5, 1921, associated together for purposes and objects similar to those contemplated by the provisions hereof desiring to come within the provisions hereof may, by resolution of their board of directors, direct written notice to be given to each stockholder or member of their corporation or group of individuals of the proposal to organize a corporation or district under the provisions hereof and request 10 or more of their members qualified as herein provided for to prepare and file, in such county as they shall select to make their principal place of business, a petition in accordance with the provisions of 35-16-202. If thereafter not less than two-thirds of the stockholders or members as such of such cooperative or other corporation, association, society, or group of individuals shall either file with the corporation or district their written consent to such reorganization or petition to become members thereof, in accordance with the provisions hereof, or both, the board of directors or other governing board of such existing cooperative or other corporation, association, society, or group of individuals shall be authorized to through proper officers transfer to such new corporation or district, when organized, their corporate assets, real, personal, and mixed.

(2) Any stockholder or member of any cooperative or other corporation or society reorganized under the provisions hereof, consenting to such reorganization but not including lands therein, shall be entitled to a certificate or shares of stock or other evidence of membership in such reorganized corporation or district of the par value equal to the value of his certificate or shares of stock or membership right in the previous existing cooperative or other corporation or society's assets at the time of such reorganization and shall be to this extent a stockholder or member; provided any stockholder or member of the corporation or group of individuals that are reorganizing shall not be considered as increasing the stock of the new corporation so as to require consent of a majority of its members or stockholders to their admission.

History: **En. Sec. 8, Art. 3, Ch. 152, L. 1921; re-en. Sec. 6421, R.C.M. 1921; re-en. Sec. 6421, R.C.M. 1935; R.C.M. 1947, 14-325.**

Cross-References

Objection to notice of hearing of petition for creation of debt, 35-16-404.

35-16-211. Stockholders dissenting from reorganization of existing association — appraisal remedy. In the event any stockholder or member of such existing cooperative or other corporation, association, society, or group of individuals shall decline to consent to such transfer or refuse to become a member of such new organization, he must, within 30 days from and after receiving written notice of the transfer of said assets to the new corporation or district, serve upon the officers of the newly created corporation or district and file in the district court of the county of its principal place of business his petition praying for the net value of his equity as a stockholder or member in said cooperative or other corporation, association, society, or group of individuals in its assets, determined and valued as of the date when the said property was transferred by the directors or executive officers to the new corporation or district. Upon a failure to, within the time and in the manner specified herein, file such claim for appraisal and settlement, it shall be forever barred.

History: En. Sec. 9, Art. 3, Ch. 152. L. 1921; re-en. Sec. 6422, R.C.M. 1921; re-en. Sec. 6422, R.C.M. 1935; R.C.M. 1947, 14-326.

35-16-212. Association operating two or more enterprises in different parts of state — control by delegates. (1) Any, either cooperative stock or nonprofit nonstock, agricultural association or company existing on July 1, 1921, or thereafter organized under the laws of Montana may own and operate two or more cooperative enterprises in different parts of the state and may exercise and possess the following powers by providing in their articles of incorporation or in their bylaws that:

(a) all powers of the association members or stockholders shall be exercised by duly elected delegates at any meeting of such delegates which may be called. They shall elect such officers and transact such business in the same manner as the association members or stockholders are empowered to do. Such officers and board of directors as the delegates may elect shall be known as "general officers" or "general board of directors".

(b) stockholders or members of such cooperative stock or nonprofit nonstock agricultural associations or companies shall be grouped into locals in such districts as the general board of directors may from time to time direct;

(c) each local, with territorial limits as determined by the general board of directors, shall elect from among its stockholders or members one delegate and one alternate to represent the local at any meeting of the association or company. Such delegate and alternate shall serve for 1 year. The alternate shall serve as delegate at all meetings where the delegate may not be in attendance.

(d) each delegate may have only one vote, regardless of the number of stockholders or members which he represents.

(2) Nothing in this section limits the powers of the board of directors of any corporation.

History: En. Sec. 1, Ch. 93, L. 1921; re-en. Sec. 6426, R.C.M. 1921; re-en. Sec. 6426, R.C.M. 1935; R.C.M. 1947, 14-330; amd. Sec. 11, Ch. 202, L. 1979.

Cross-References

Voting proxies, 35-16-311.

Elections, 35-16-312, 35-16-313.

Part 3
Members and Directors

Part Cross-References

Directors and officers of business corporations, Title 35, ch. 1, part 4.

Directors and officers of nonprofit corporations, Title 35, ch. 2, part 4.

Shareholders, directors, and officers of cooperative associations, Title 35, ch. 15, part 3.

Members, directors, and officers of cooperative agricultural marketing associations, Title 35, ch. 17, part 3.

Members, trustees, and officers of rural cooperative utilities, Title 35, ch. 18, part 3.

35-16-301. Members and membership lands. The members of a corporation or district organized hereunder shall be called "members". The lands included by such members shall be called "membership lands".

History: En. Sec. 9, Art. 1, Ch. 152, L. 1921; re-en. Sec. 6405, R.C.M. 1921; re-en. Sec. 6405, R.C.M. 1935; R.C.M. 1947, 14-309.

Cross-References

Corporate indebtedness as lien upon membership lands, 35-16-401.

35-16-302. Procedure for receiving other members. (1) Whenever any corporation or district has been formed under the provisions hereof, it is authorized and directed to permit other holders of title or evidence of title of similar or like agricultural, horticultural, or farm lands within this state to become members thereof, upon such holder of title or evidence of title, in manner and form as may be required by the laws of Montana and the rules of such corporation or district or its bylaws, applying for membership therein to the officers thereof by written application, duly acknowledged:

(a) containing a full, true, and correct description of the lands owned by him and proposed to be contained in said corporation or district;

(b) containing a statement of his desire to become a member thereof and his consent to submit his lands to the provisions hereof and to the administration of said corporation or district and its bylaws and to its objects and purposes; and

(c) accompanied by a map of the lands so owned by him and proposed to be submitted to said corporation or district, its objects and purposes.

(2) If said application shall be in proper form and the applicant be the holder of title or evidence of title to the lands described and the uses of said land as represented in said petition be similar to the uses of lands already included in said corporation or district, a full, true, and correct copy of his application shall be made and filed in the office of principal place of business of the corporation or district and his original application shall be filed and recorded in the office of the county clerk and recorder of the county in which the lands or the greater portion thereof is situate. He shall thereupon be entitled to evidence of temporary membership, in shares or units of membership, in similar manner as original members thereof and the lands described in the petition shall thereafter be construed to be a part of said corporation or district to all intents and purposes as though originally incorporated therein. Upon the consent of a majority of the members or stockholders given in the annual meeting or at a special meeting called as

provided by law for that purpose, such new member or stockholder shall be entitled to full membership in such corporation or district.

History: En. Sec. 6, Art. 1, Ch. 152, L. 1921; re-en. Sec. 6402, R.C.M. 1921; re-en. Sec. 6402, R.C.M. 1935; R.C.M. 1947, 14-306.

35-16-303. Withdrawal of membership lands — procedure. Any person holding title or evidence of title to membership lands included in a corporation or district organized under the provisions hereof subsequently desiring to withdraw his lands from such corporation or district may do so upon presenting to the board of directors his verified petition stating that he is the holder of title or evidence of title to membership lands included therein, particularly describing the same with a map or plat thereof, that he is desirous of withdrawing from such corporation or district, and tendering to said board the pro rata amount of liability of his lands for all of the corporation's lawfully created and existing lien liabilities together with his pro rata amount of interest due and to become due upon any such liabilities to the maturity of the same. If the matters and things set forth in said petition shall be true and said petitioner shall deposit with the board his pro rata amount of the liabilities as before herein set out or furnish a receipt for such amount from the mortgage or lien holders holding liens against such lands, the proper officers of the corporation or district shall make, execute, acknowledge, and deliver a release of said lands from incorporation or district and its liabilities. Upon presentation of such release to the mortgage or lien holder claiming a right against said membership lands, they shall furnish their release thereof, which said release or releases may be filed and recorded in any county or counties in which said lands may be situated. The board of directors and corporate assets of the corporation shall be responsible to any mortgage or lien holder and the withdrawee for the payments of such funds on their debt or liability.

History: En. Sec. 6, Art. 3, Ch. 152, L. 1921; re-en. Sec. 6419, R.C.M. 1921; re-en. Sec. 6419, R.C.M. 1935; R.C.M. 1947, 14-323.

35-16-304. Withdrawal — application to court for order. In the event the board of directors shall refuse or fail for a period of 30 days to act upon such petition of withdrawal, the petitioner shall be entitled to apply to the district court in the county wherein said lands or the larger proportion of the same shall be situated for an order of withdrawal, and upon his payment to the clerk of the court for the use and benefit of the holders of mortgages or other liens against said corporation or its membership lands of the pro rata amount of his land's liabilities therefor, he shall be entitled to an order of withdrawal and release of his lands from said court. The filing with the clerk and recorder of a duly certified copy of such order permitting withdrawal shall operate to release the membership lands described therein from any liens of the corporation under the provisions hereof.

History: En. Sec. 7, Art. 3, Ch. 152, L. 1921; re-en. Sec. 6420, R.C.M. 1921; re-en. Sec. 6420, R.C.M. 1935; R.C.M. 1947, 14-324.

35-16-305 through 35-16-310 reserved.

35-16-311. Meetings — voting — proxies. At the organization meeting or any meeting of the stockholders or members of a corporation or district organized under the provisions hereof, each member and each unit of membership in acres, production, or other evidence of membership shall be entitled to vote in person or by proxy. Corporate action at such meeting shall be determined by a majority of the membership and a majority of the acres, production, or units of membership, as may have been adopted. Any group of members of a subdivision or subdistrict of the corporation or district as may be defined and designated by the board of directors or bylaws shall, at a subdivision or subdistrict meeting called for the purpose, elect a delegate or proxy to represent all of the membership in the subdivision or subdistrict at any such meeting. Where any subdivision or subdistrict fails to elect such delegate, any individual member may give proxy, provided no person shall be entitled to act as proxy who is not himself a member of the corporation or district and a resident agricultural or horticultural freeholder in the state of Montana for not less than 3 years immediately preceding such meeting.

History: En. Sec. 8, Art. 2, Ch. 152, L. 1921; re-en. Sec. 6413, R.C.M. 1921; re-en. Sec. 6413, R.C.M. 1935; R.C.M. 1947, 14-317.

35-16-312. Directors — election — term. Directors must be elected at the annual meeting and may hold office for the term and in the manner as specified in the bylaws.

History: En. Sec. 6, Art. 2, Ch. 152, L. 1921; re-en. Sec. 6411, R.C.M. 1921; re-en. Sec. 6411, R.C.M. 1935; R.C.M. 1947, 14-315.

35-16-313. Elections — how conducted — voting. All elections must be by ballot and every stockholder or member or holder of a unit of membership in acres, production, or other evidence of membership shall have the right to vote in person or by a proxy in conformity with the provisions hereof, the constitution and laws of this state, and the bylaws of the corporation or district.

History: En. Sec. 7, Art. 2, Ch. 152, L. 1921; re-en. Sec. 6412, R.C.M. 1921; re-en. Sec. 6412, R.C.M. 1935; R.C.M. 1947, 14-316.

35-16-314. Qualifications of directors — quorum — vacancies. (1) No person shall be eligible to be a director of any corporation or district organized under the provisions hereof who is not himself a member of the corporation or district and a resident agricultural freeholder in the state of Montana.

(2) A quorum of the board of directors shall at all times be necessary for the transaction of business; provided, if the bylaws or board of directors shall provide for an executive committee, a quorum of such committee shall have authority to carry on business.

(3) Whenever a vacancy occurs in the office of a director, unless the bylaws shall otherwise provide, such vacancy may be filled by appointment by the board of directors.

History: En. Sec. 5, Art. 2, Ch. 152, L. 1921; re-en. Sec. 6410, R.C.M. 1921; re-en. Sec. 6410, R.C.M. 1935; R.C.M. 1947, 14-314.

35-16-315. Directors — number — powers. (1) The corporate or district powers, business, and property of all corporations or districts formed under the provisions hereof must be exercised, conducted, and controlled by a board, which shall never be less than three members. Otherwise, the number of members of the board may be increased or diminished at any time by proper amendment of the bylaws with reference thereto.

(2) The directors shall have the power to sell, lease, mortgage, hypothecate, or otherwise dispose of the corporate assets of the corporation or district, or any part thereof, as distinguished from membership lands.

History: En. Sec. 4, Art. 2, Ch. 152, L. 1921; re-en. Sec. 6409, R.C.M. 1921; re-en. Sec. 6409, R.C.M. 1935; R.C.M. 1947, 14-313.

Cross-References

Amendment of bylaws, 35-16-208.

35-16-316. Repealed. Sec. 12, Ch. 202, L. 1979.

History: En. Sec. 2, Ch. 93, L. 1921; re-en. Sec. 6427, R.C.M. 1921; re-en. Sec. 6427, R.C.M. 1935; R.C.M. 1947, 14-331.

Part 4

Corporate Indebtedness

35-16-401. Corporate indebtedness as lien upon membership lands. (1) After the date of the inclusion of any land or property as a member in any corporation or district organized under the provisions of this chapter, all mortgage or bonded indebtedness created by such corporation or district is a first lien upon the membership lands to an extent not to exceed 18% of the taxable value thereof if the land is grazing or agricultural and not to exceed 36% of the taxable value thereof if the land is horticultural or vegetable-producing.

(2) The recording of the copy of the articles of incorporation or petition to become a member of such corporation or district is notice to all subsequent lien claimants that the lands are subject to a first lien. However, nothing in this section may be construed as placing a limit upon the indebtedness that may be made a lien against any of the corporate or property assets of the corporation or district, as distinguished from membership lands individually owned.

History: En. Sec. 7, Art. 1, Ch. 152, L. 1921; re-en. Sec. 6403, R.C.M. 1921; re-en. Sec. 6403, R.C.M. 1935; amd. Sec. 33, Ch. 566, L. 1977; R.C.M. 1947, 14-307.

Cross-References

Petition for incorporation, 35-16-202.

35-16-402. Directors' resolution for creation of debt — contents. (1) The board of directors or other officers of a corporation or district organized under the provisions hereof as such shall have no power to incur any debt or liability which will be a lien upon its membership lands, except in accordance with the terms and provisions hereof.

(2) When at a meeting of the directors of any corporation or district organized hereunder, of which meeting each director shall have received at least 5 days' written or telegraphic prior notice, it shall be determined to the interests of said corporation or district for the promotion of its objects and business to create an indebtedness of said corporation or district secured by a first lien or mortgage upon all of the membership lands to the extent allowed under the provisions hereof, such meeting shall pass and spread at length upon their minutes a resolution specifying the purposes for which such debt is to be created, the amount thereof, the rate of interest to be paid thereon, the manner and form of evidencing the same, and any coupons for interest thereon and authorizing, directing, and empowering the executive officers of the corporation or district to, upon the approval of the district court as hereinafter provided for, make, execute, and deliver bonds, notes, coupons, or other evidences of the debt and mortgages, deeds of trust, or other instruments of mortgage and hypothecation for security of the same.

History: En. Sec. 1, Art. 3, Ch. 152, L. 1921; re-en. Sec. 6414, R.C.M. 1921; re-en. Sec. 6414, R.C.M. 1935; R.C.M. 1947, 14-318.

35-16-403. Petition to district court for creation of debt. Upon the passage of such resolution, the executive officers of the corporation or district shall prepare and file their verified petition in the district court of the county of principal place of business of such corporation or district, setting forth the fact of the passage of the resolution by the board of directors, the reason for the creation of such debt, and such other facts as may be necessary to fully advise the court with reference to such corporation or district, its aims and objects and the purposes for which said debt is to be created and the money expended, and praying for the approval of the court for the creation of such debt and the mortgage and hypothecation of its membership lands as security therefor.

History: En. Sec. 2, Art. 3, Ch. 152, L. 1921; re-en. Sec. 6415, R.C.M. 1921; re-en. Sec. 6415, R.C.M. 1935; R.C.M. 1947, 14-319.

35-16-404. Notice of hearing of petition — hearing — order of court. (1) Upon presentation of such petition to the court, the court shall set the same for hearing at a time not less than 20 or more than 40 days from the date of filing thereof and direct personal notice to be given to such members as are within the state of Montana and by mail to such members without the state and by publication in some newspaper of general circulation in each of the counties in which membership lands to be affected are situated, for not less than 2 weeks prior to the hearing of said petition, which notice shall state:

(a) the name of the corporation or district;

(b) its principal place of business;

(c) the fact that it has applied to a district court (naming and describing the same) for leave to create a bonded indebtedness of the amount prayed for; and

(d) the maximum rate of interest proposed to be paid thereon and time of maturity.

(2) On the day set for the hearing of the petition, the court shall proceed to hear the same and any objections that may be filed to the granting hereof. If upon said hearing the court shall find that:

(a) notice has been given as required by this law and the orders of the court;

(b) the matters and things set forth in said petition are true;

(c) the objects and purposes for which the money is sought are within the legitimate objects and purposes for said corporation or district for the carrying on of its business and the board of directors have determined that such fund is proper or required for the carrying on of its business; and

(d) the provisions of this law have been complied with, the court shall sign and order filed, entered, and docketed its judgment and decree, including its findings on said hearing, describing the lands and authorizing, ordering, and directing the executive officers of such corporation or district to make, execute, and deliver notes, bonds, coupons, or other evidences of indebtedness of the total amount prayed for in the petition and the maximum interest to be permitted and make, execute, sign, and deliver mortgage or deed of trust or instrument of hypothecation covering the real property of the corporation or district and all of the membership lands in said corporation or district; said judgment to specify that for the payment of said debt and the interest thereon, as authorized, recourse shall first be had to the real property of said corporation or district, separate and apart from the membership lands of the individual members thereof, and in the event of the failure of the corporate real property to fully satisfy, pay, and discharge said debt and its interest, as the same may be due, to permit and allow recourse to be had in the form of first lien and right upon all membership lands in said corporation or district to the extent authorized by the provisions hereof; provided, if a majority as provided for in 35-16-210 shall file written objection to the granting of the petition, the court shall dismiss the proceeding and no similar proceeding shall be filed within 6 months thereafter.

History: En. Sec. 3, Art. 3, Ch. 152, L. 1921; re-en. Sec. 6416, R.C.M. 1921; re-en. Sec. 6416, R.C.M. 1935; R.C.M. 1947, 14-320.

35-16-405. Execution and record of mortgage — lien. Upon the signing, entering, and docketing of a judgment authorizing the loan, the executive officers of such corporation or district shall be authorized and empowered to make, execute, and provide for the sale and delivery of notes, bonds, coupons, or other evidences of indebtedness of said corporation or district and make, execute, and deliver mortgages and deeds of trust or instruments of hypothecation, as required, as security for such debts and the interest thereon. Any such mortgage or deed of trust which may be executed and delivered in accordance herewith shall set forth at length the order and decree of the district court authorizing the same, and when recorded in the office of the county clerk and recorder of any county in which membership lands included in the membership of such corporation or district or any of the assets of said corporation or district are situated, said mortgage shall be a first lien upon all the lands of said corporation or district and upon all of the membership lands of the individual members as may be included in said corporation or district situated in such county as of the date when such lands became members of such corporation or district, to the extent of the limitation of indebtedness thereon herein provided for.

History: En. Sec. 4, Art. 3, Ch. 152, L. 1921; re-en. Sec. 6417, R.C.M. 1921; re-en. Sec. 6417, R.C.M. 1935; R.C.M. 1947, 14-321.

35-16-406. Foreclosure of mortgage — procedure — tax levy. In the event there shall be default in either principal or interest or the terms and conditions of any bonds, notes, or mortgages or deeds of trust, made, executed, and delivered pursuant to the authority hereof, the holder or holders of such mortgage or the trustee named in the deed of trust shall be entitled to proceed to foreclose the same in the manner provided for in Title 71, and the application for foreclosure shall be proceeded with as a foreclosure proceeding. If the court in such foreclosure shall find for the plaintiff and order foreclosure of the mortgage or deed of trust as prayed for, such court is hereby empowered in its discretion to include in its judgment and decree of foreclosure an order and direction to the county clerk and recorder of each of the counties in which lands included in said mortgage are situated ordering and directing the county clerk and recorders of such counties to levy and include, as part of the taxes levied against the membership lands included therein, the proportion that such lands shall be liable for such indebtedness and costs so found to be due, which tax thus created shall be collected in whole or in part over a period of not to exceed 3 years as the court shall in its order direct.

History: En. Sec. 5, Art. 3, Ch. 152, L. 1921; re-en. Sec. 6418, R.C.M. 1921; re-en. Sec. 6418, R.C.M. 1935; R.C.M. 1947, 14-322.

CHAPTER 17

COOPERATIVE AGRICULTURAL MARKETING

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Chapter Cross-References

Unfair trade practices, 30-14-214, 30-14-216, 30-14-224.

Cooperative associations, Title 35, ch. 15.

Agricultural associations, Title 35, ch. 16.

Agricultural marketing and transportation, Title 80, ch. 11, part 1.

Wheat research and marketing, Title 80, ch. 11, part 2.

Livestock marketing, Title 81, ch. 8.

Part 1
General

35-17-101. Short title. This chapter shall be referred to as the "Cooperative Marketing Act".

History: En. Sec. 2, Ch. 233, L. 1921; re-en. Sec. 6429, R.C.M. 1921; re-en. Sec. 6429, R.C.M. 1935; R.C.M. 1947, 14-402(part).

35-17-102. Declaration of policy. In order to promote, foster, and encourage the intelligent and orderly marketing of agricultural products through cooperation and to eliminate speculation and waste and to make the distribution of agricultural products as direct as can efficiently be done between producer and consumer, to stabilize the marketing problems of agricultural products, and to supply to its members necessary equipment, this chapter is passed.

History: En. Sec. 1, Ch. 233, L. 1921; re-en. Sec. 6428, R.C.M. 1921; re-en. Sec. 6428, R.C.M. 1935; R.C.M. 1947, 14-401.

35-17-103. Definitions and associations as nonprofit entities. (1) The term "agricultural products" includes horticultural, viticultural, forestry, dairy, livestock, poultry, bee, and any farm products.

(2) The term "association" means any corporation organized under this chapter.

(3) The term "member" means a person who has been qualified and accepted for membership in an association.

(4) The term "person" includes individuals, firms, partnerships, corporations, and associations.

(5) Associations organized under this chapter must be considered nonprofit because they are not organized to make profits for themselves or for their members, but only for their members as producers.

History: En. Sec. 2, Ch. 233, L. 1921; re-en. Sec. 6429, R.C.M. 1921; re-en. Sec. 6429, R.C.M. 1935; R.C.M. 1947, 14-402(part); amd. Sec. 2, Ch. 130, L. 1999.

Compiler's Comments

1999 Amendment: Chapter 130 in (3) substituted definition of member for former definition that read: ""member" shall include actual members of associations without capital stock and holders of common stock in associations organized with capital stock"; and made minor changes in style. Amendment effective October 1, 1999.

Cross-References

Nonprofit corporations generally, Title 35, ch. 2.

35-17-104. Who may organize. Five or more persons engaged in the production of agricultural products may form a nonprofit cooperative association, with or without capital stock, under the provisions of this chapter.

History: En. Sec. 3, Ch. 233, L. 1921; re-en. Sec. 6430, R.C.M. 1921; re-en. Sec. 6430, R.C.M. 1935; R.C.M. 1947 14-403.

35-17-105. Permissible purposes for organization. An association may be organized to engage in:

(1) any activity in connection with the marketing or selling of the agricultural products of its members or with the harvesting, preserving, drying, processing, canning, packing, storing, handling, shipping, or utilization thereof or the manufacturing or marketing of the byproducts thereof;

(2) any activity in connection with the manufacturing, selling, or supplying to its members of machinery, equipment, or supplies;

(3) the financing of the above-enumerated activities; or

(4) any one or more of the activities specified herein.

History: En. Sec. 4, Ch. 233, L. 1921; re-en. Sec. 6431, R.C.M. 1921; re-en. Sec. 6431, R.C.M. 1935; R.C.M. 1947, 14-404.

Cross-References

Articles to specify purpose, 35-17-202.

35-17-106. Powers of associations. Each association incorporated under this chapter shall have the following powers:

(1) to engage in any activity in connection with the marketing, selling, harvesting, preserving, drying, processing, canning, packing, storing, handling, or utilization of any agricultural products produced or delivered to it by its members or the manufacturing or marketing of the byproducts thereof or in connection with the purchase, hiring, or use by its members of supplies, machinery, or equipment or in the financing of any such activities or in any one or more of the activities specified in this section. No association shall handle the agricultural products of nonmembers in greater volume than that of members.

(2) to borrow money and to make advances to members;

(3) to act as the agent or representative of any member or members in any of the above-mentioned activities;

(4) to purchase or otherwise acquire and to hold, own, and exercise all rights of ownership in and to sell, transfer, or pledge shares of the capital stock or bonds of any corporation or association engaged in any related activity or in the handling or marketing of any of the products handled by the association;

(5) to establish reserves and to invest the funds thereof in bonds or such other property as may be provided in the bylaws;

(6) to buy, hold, and exercise all privileges of ownership over such real or personal property as may be necessary or convenient for the conducting and operation of any of the business of the association or incidental thereto;

(7) to do each and every thing necessary, suitable, or proper for the accomplishment of any one of the purposes or the attainment of any one or more of the objects herein enumerated or conducive to or expedient for the interest or benefit of the association and to contract accordingly and in addition to exercise and possess all powers, rights, and privileges necessary or incidental to the purposes for which the association is organized or to the activities in which it is engaged and in addition any other rights, powers, and privileges granted by the laws of this state to ordinary corporations, except such as are inconsistent with the expressed provisions of this chapter, and to do any such thing anywhere.

History: En. Sec. 6, Ch. 233, L. 1921; re-en. Sec. 6433, R.C.M. 1921; amd. Sec. 1, Ch. 109, L. 1933; re-en. Sec. 6433, R.C.M. 1935; R.C.M. 1947, 14-406.

Cross-References

Articles of incorporation to specify purpose, 35-17-202.

Who may be members, 35-17-301.

Assignment of agreement as security for loans, 35-17-408.

Part 2
Formation

Part Cross-References

Formation, articles of incorporation, and bylaws of business corporations, Title 35, ch. 1, part 2.

Formation, articles of incorporation, and bylaws of nonprofit corporations, Title 35, ch. 2, part 2.

Formation of religious corporations sole, Title 35, ch. 3, part 2.

Organization of professional service corporations, Title 35, ch. 4, part 2.

Formation and operation of business trusts, Title 35, ch. 5, part 2.

Formation of limited partnerships, Title 35, ch. 12, part 6.

Formation of mining partnerships, Title 35, ch. 13, part 1.

Formation, articles of incorporation, and bylaws of cooperative associations, Title 35, ch. 15, part 2.

Formation of agricultural associations, Title 35, ch. 16, part 2.

Formation, articles, and bylaws of rural cooperative utilities, Title 35, ch. 18, part 2.

35-17-201. Marketing survey. Every group of persons contemplating the organization of an association under this chapter is urged to communicate with the dean of the state agricultural college who will inform it whatever a survey of the marketing conditions affecting the commodities to be handled by the proposed association indicates regarding probable success.

History: En. Sec. 5, Ch. 233, L. 1921; re-en. Sec. 6432, R.C.M. 1921; re-en. Sec. 6432, R.C.M. 1935; R.C.M. 1947, 14-405.

35-17-202. Articles of incorporation — contents — filing — articles or copies as prima facie evidence. (1) Each association formed under this chapter shall prepare and file articles of incorporation setting forth:

(a) the name of the association;

(b) the purposes for which it is formed;

(c) the place where its principal business will be transacted;

(d) the term for which it is to exist, which may be perpetual;

(e) the number of its directors or trustees and the names and residences of those who are appointed for the first 3 months and until their successors are elected and qualified;

(f) if organized without capital stock, whether the property rights and interest of each member are equal or unequal, and if unequal, the articles must set forth the general rule or rules applicable to all members by which the property rights and interests, respectively, of each member must be determined and fixed. The association has the power to admit new members who must be entitled to share in the property of the association with the old members, in accordance with the general rules;

(g) the designation of classes of members, if more than one;

(h) the number and par value of shares of each authorized class of stock and, if more than one class is authorized:

(i) the designation, preferences, limitations, and relative rights of each class;

(ii) which classes of stock are membership stock;

(iii) as to each class of stock, the rate of dividend, if any, or a statement that the rate of dividend may be fixed by the board; and

(iv) any reservation of a right to acquire or recall any stock.

(2) In addition to provisions required in subsection (1), the articles of incorporation may also contain provisions not inconsistent with law regarding liability as set forth in 35-1-216.

(3) The articles must be subscribed by the incorporators and must be filed in accordance with the provisions of the general corporation law of this state, and when so filed, the articles of incorporation or certified copies must be accepted as prima facie evidence of the facts contained in the articles and of the due incorporation of the association.

History: En. Sec. 8, Ch. 233, L. 1921; re-en. Sec. 6435, R.C.M. 1921; re-en. Sec. 6435, R.C.M. 1935; amd. Sec. 1, Ch. 298, L. 1977; R.C.M. 1947, 14-408; amd. Sec. 36, Ch. 174, L. 1983; amd. Sec. 5, Ch. 559, L. 1987; amd. Sec. 209, Ch. 368, L. 1991; amd. Sec. 3, Ch. 130, L. 1999.

Compiler's Comments

1999 Amendment: Chapter 130 in (1)(e) after "number of its directors or trustees" deleted "which shall not be less than 5 or more than 13"; inserted (1)(g) relating to designation of classes of members; inserted (1)(h) relating to authorized classes of stock; and made minor changes in style. Amendment effective October 1, 1999.

Cross-References

Permissible purposes for organization, 35-17-105.

Directors, 35-17-311.

35-17-203. Amendments to articles of incorporation. At any time after filing, the articles of incorporation may be amended. Any amendment of the articles of incorporation must be approved by a majority of the directors and then adopted by vote of a majority of those members voting at any regular meeting of the association or at a special meeting called for the purpose of amending the articles, unless the articles require approval by a larger number of directors or members. A statement setting forth the amendment must be executed and attested to on behalf of the association by its appropriate officers. The statement must be filed in the office of the secretary of state who shall issue a certificate of amendment of the articles of incorporation. A certified copy of the certificate of amendment must be filed in the office of the county clerk for the county in which the principal office of the association is located.

History: En. Sec. 9, Ch. 233, L. 1921; re-en. Sec. 6436, R.C.M. 1921; re-en. Sec. 6436, R.C.M. 1935; amd. Sec. 2, Ch. 298, L. 1977; R.C.M. 1947, 14-409; amd. Sec. 37, Ch. 174, L. 1983; amd. Sec. 4, Ch. 130, L. 1999.

Compiler's Comments

1999 Amendment: Chapter 130 substituted second sentence requiring majority vote of directors and members unless larger number required by articles for former second sentence that read: "Any amendment of the articles of incorporation shall be approved by two-thirds of the directors and then adopted by vote of not less than two-thirds of those stockholders voting thereon at any regular meeting of the stockholders or at a special meeting of the stockholders called for that purpose"; in third sentence substituted "must be executed and attested to on behalf of the association by its appropriate officers" for "shall be executed on behalf of the association by its president or vice-president and its corporate seal affixed thereto and attested by its secretary"; and made minor changes in style. Amendment effective October 1, 1999.

Cross-References

Amendments of articles of incorporation of cooperative associations, 35-15-205.

Amendments of articles of incorporation of rural cooperative utilities, 35-18-204, 35-18-501.

35-17-204. Adoption of chapter by existing associations. Any corporation or association organized under statutes existing prior to March 5, 1921, may, by a majority vote of its stockholders or members, be brought under the provisions of this chapter by limiting its membership and adopting the other restrictions as provided herein. It shall prepare one original and one copy of a statement signed by its directors, upon forms supplied by the secretary of state, to the effect that the corporation or association has by a majority vote of its stockholders or members decided to accept the benefits and be bound by provisions of this chapter. Articles of incorporation shall be filed as required in 35-17-202, except that they shall be signed by the members of the board of directors. The filing fee shall be the same as for filing an amendment to articles of incorporation.

History: En. Sec. 20, Ch. 233, L. 1921; re-en. Sec. 6447, R.C.M. 1921; re-en. Sec. 6447, R.C.M. 1935; R.C.M. 1947, 14-420; amd. Sec. 157, Ch. 575, L. 1981; amd. Sec. 55, Ch. 131, L. 1983; amd. Sec. 38, Ch. 174, L. 1983.

Cross-References

County filing fees for marketing agreements, 35-17-409.

35-17-205. Fees for filing articles and amendments thereto. For filing articles of incorporation and receiving a certificate of incorporation, an association organized hereunder shall pay to the secretary of state $40 and for filing an amendment to the articles and receiving a certificate of amendment, $10.

History: En. Sec. 22, Ch. 233, L. 1921; re-en. Sec. 6449, R.C.M. 1921; re-en. Sec. 6449, R.C.M. 1935; amd. Sec. 4, Ch. 117, L. 1961; R.C.M. 1947, 14-422.

Cross-References

Issuance of certificate of organization for cooperative associations, 35-15-204.

Issuance of certificate of incorporation for agricultural associations, 35-16-204.

County filing fees for marketing agreements, 35-17-409.

35-17-206. Bylaws. (1) Each association incorporated under this chapter must, within 30 days after its incorporation, adopt for its government and management a code of bylaws, not inconsistent with the powers granted by this chapter. A majority vote of the members or stockholders or their written assent is necessary to adopt such bylaws. The bylaws may be amended at any regular or special meeting if approved by a majority vote of the stockholders voting thereon.

(2) Each association under its bylaws may also provide for any or all of the following matters:

(a) the time, place, and manner of calling and conducting its meetings;

(b) the number of stockholders or members constituting a quorum;

(c) the right of members or stockholders to vote by proxy or by mail or by both and the conditions, manner, form, and effects of such votes;

(d) the number of directors constituting a quorum;

(e) the qualifications, compensation, duties, and term of office of directors and officers, time of their election, and the mode and manner of giving notice thereof;

(f) penalties for violations of the bylaws;

(g) the amount of entrance, organization, and membership fees, if any, the manner and method of collection of the same, and the purposes for which they may be used;

(h) the amount which each member or stockholder shall be required to pay annually or from time to time, if at all, to carry on the business of the association, the charge, if any, to be paid by each member or stockholder for services rendered by the association to him and the time of payment and the manner of collection, and the marketing contract between the association and its members or stockholders which every member or stockholder may be required to sign;

(i) the number and qualifications of members or stockholders of the association and the conditions precedent to membership or ownership of common stock; the method, time, and manner of permitting members to withdraw or the holders of common stock to transfer their stock; the manner of assignment and transfer of the interest of members and the shares of common stock; the conditions upon which and the time when membership of any member shall cease;

(j) the automatic suspension of the rights of a member when he ceases to be eligible to membership in the association and the mode, manner, and effect of the expulsion of a member;

(k) the manner of determining the value of a member's interest and provision for its purchase by the association upon the death or withdrawal of a member or stockholder or upon the expulsion of a member or forfeiture of his membership or, at the option of the association, by conclusive appraisal by the board of directors.

History: En. Sec. 10, Ch. 233, L. 1921; re-en. Sec. 6437, R.C.M. 1921; re-en. Sec. 6437, R.C.M. 1935; amd. Sec. 3, Ch. 298, L. 1977; R.C.M. 1947, 14-410(part).

Cross-References

Operation — members, directors, and officers, Title 35, ch. 17, part 3.

Part 3

Operation — Members, Directors, and Officers

Part Cross-References

Directors and officers of business corporations, Title 35, ch. 1, part 4.

Directors and officers of nonprofit corporations, Title 35, ch. 2, part 4.

Shareholders, directors, and officers of cooperative associations, Title 35, ch. 15, part 3.

Members and directors of agricultural associations, Title 35, ch. 16, part 3.

Bylaws, 35-17-206.

Members, trustees, and officers of rural cooperative utilities, Title 35, ch. 18, part 3.

35-17-301. Who may be members. (1) Under the terms and conditions prescribed in its bylaws, an association may admit as members or issue stock only to persons engaged in the production of the agricultural products to be handled by or through the association, including the lessees and tenants of land used for the production of the products and any lessors and landlords who receive as rent part of the crop raised on the leased premises.

(2) If a member of a nonstock association is other than a natural person, that member may be represented by any individual, associate, officer, or member authorized in writing.

(3) One association organized under this chapter may become a member or stockholder of any other association or associations organized under this chapter.

History: En. Sec. 7, Ch. 233, L. 1921; re-en. Sec. 6434, R.C.M. 1921; re-en. Sec. 6434, R.C.M. 1935; R.C.M. 1947, 14-407; amd. Sec. 5, Ch. 130, L. 1999.

Compiler's Comments

1999 Amendment: Chapter 130 near beginning of (1) substituted "issue stock" for "issue common stock"; and made minor changes in style. Amendment effective October 1, 1999.

35-17-302. Stock — issuance — limitations on ownership and transfer — repurchase by association. (1) When a member of an association established without capital stock has paid the member's membership fee in full, the member must receive a certificate of membership.

(2) (a) An association organized with capital stock may issue the amount of stock stated in its articles. The stock may be divided into two or more classes with the designations, preferences, limitations, and relative rights as stated in the articles, except that stock without par value may not be issued.

(b) The articles may require that members own one or more shares of membership stock. The membership stock may be issued or transferred only to a person eligible to become a member and only when that person satisfies the other requisites for membership. Unless restricted by the articles, stock other than membership stock may be issued or transferred to any person.

(3) An association may not issue stock to a member until it has been fully paid for. The promissory notes of the members may be accepted by the association as full or partial payment. The association shall hold the stock as security for the payment of the note, but retention as security does not affect the members' right to vote.

(4) An association, in its bylaws, may limit the amount of common stock that one member may own.

(5) (a) Unless the articles provide otherwise, an association may acquire, recall, exchange, redeem, and reissue its own stock. Provisions in the articles and on the stock certificate may reserve to the association a prior right to acquire any stock offered for sale or the right to recall the stock of any stockholder, or both rights.

(b) The consideration paid by the association for recalled stock must be its par value and accrued unpaid dividends. However, if the book value of the stock is less than the par value, the consideration must be the book value.

(c) An association may set off obligations of a stockholder to the association.

(d) If the remaining assets of an association would be less than the aggregate amount payable to creditors and persons holding stock with preferential rights upon liquidation, the association may not acquire, recall, exchange, or redeem any stock for consideration other than stock or certificates of equity interest of equal or subordinate rank.

(6) (a) If stock is acquired, recalled, exchanged, or redeemed by an association, the stock is restored to the status of authorized but unissued stock.

(b) Stockholders do not have a preemptive right to purchase additional stock.

History: En. Sec. 14, Ch. 233, L. 1921; re-en. Sec. 6441, R.C.M. 1921; re-en. Sec. 6441, R.C.M. 1935; R.C.M. 1947, 14-414(part); amd. Sec. 6, Ch. 130, L. 1999.

Compiler's Comments

1999 Amendment: Chapter 130 inserted (2) relating to an association organized with capital stock and relating to membership and nonmembership stock; in (4) at beginning deleted "No stockholder of a cooperative association shall own more than one-twentieth of the issued common stock of the association, and" and at end after "one member may own" deleted "to any amount less than one-twentieth of the issued common stock"; deleted former (4) and (5) that read: "(4) The bylaws shall prohibit the transfer of the common stock of the association to persons not engaged in the production of the agricultural products handled by the association, and such restrictions must be printed upon every certificate of stock subject thereto.

(5) The association may at any time, except when the debt of the association exceeds 50% of the assets thereof, buy in or purchase its common stock at book value thereof as conclusively determined by the board of directors and pay for it in cash within 1 year thereafter"; inserted (5) allowing an association to acquire, recall, exchange, redeem, and reissue its own stock; inserted (6) relating to restoration of certain stock as authorized but unissued stock and denying preemptive right of stockholders to purchase additional stock; and made minor changes in style. Amendment effective October 1, 1999.

Cross-References

Shares of business corporations, Title 35, ch. 1, part 6.

Shares of cooperative associations, Title 35, ch. 15, part 4.

Stockholder provisions of agricultural associations, Title 35, ch. 16, part 2.

Conversion of corporation shares into rural cooperative utility memberships, 35-18-206.

35-17-303. Limited liability of members. Except for debts lawfully contracted between him and the association, no member shall be liable for the debts of the association to an amount exceeding the sum remaining unpaid on his membership fee or his subscription to the capital stock, including any unpaid balance on any promissory notes given in payment thereof.

History: En. Sec. 14, Ch. 233, L. 1921; re-en. Sec. 6441, R.C.M. 1921; re-en. Sec. 6441, R.C.M. 1935; R.C.M. 1947, 14-414(part).

35-17-304. Expulsion of member. In case of the expulsion of a member, the board of directors shall equitably and conclusively appraise the member's property interests in the association and shall fix the amount of the interest in money, which must be paid to the member within 1 year after expulsion.

History: En. Sec. 10, Ch. 233, L. 1921; re-en. Sec. 6437, R.C.M. 1921; re-en. Sec. 6437, R.C.M. 1935; amd. Sec. 3, Ch. 298, L. 1977; R.C.M. 1947, 14-410(part); amd. Sec. 7, Ch. 130, L. 1999.

Compiler's Comments

1999 Amendment: Chapter 130 at beginning before "expulsion of a member" deleted "withdrawal or" and at end after "expulsion" deleted "or withdrawal"; and made minor changes in style. Amendment effective October 1, 1999.

35-17-305. Meetings of members — general and special — how called — notice — one vote per member. (1) In its bylaws each association shall provide for one or more regular meetings annually.

(2) The board of directors shall have the right to call a special meeting at any time, and 10% of the members or stockholders may file a petition stating the specific business to be brought before the association and demand a special meeting at any time. Such meeting must thereupon be called by the directors.

(3) Notice of all meetings, together with a statement of the purposes thereof, shall be mailed to each member at least 10 days prior to the meeting. However, the bylaws may require instead that such notice may be given by publication in a newspaper of general circulation published at the principal place of business of the association.

(4) No member or stockholder shall be entitled to more than one vote.

History: **(1) thru (3)En. Sec. 11, Ch. 233, L. 1921; re-en. Sec. 6438, R.C.M. 1921; re-en. Sec. 6438, R.C.M. 1935; Sec. 14-411, R.C.M. 1947; (4)En. Sec. 14, Ch. 233, L. 1921; re-en. Sec. 6441, R.C.M. 1921; re-en. Sec. 6441, R.C.M. 1935; Sec. 14-414, R.C.M. 1947; R.C.M. 1947, 14-411, 14-414(part).**

35-17-306 through 35-17-310 reserved.

35-17-311. Directors — election — compensation — interest in contracts — vacancies. (1) The affairs of the association shall be managed by a board of not less than five directors elected by the members or stockholders from their own number. The bylaws may provide that the territory in which the association has members shall be divided into districts and that the directors shall be elected according to such districts. In such a case the bylaws shall specify the number of directors to be elected by each district, the manner and method of reapportioning the directors and of redistricting the territory covered by the association. The bylaws may provide that primary elections should be held in each district to elect the directors apportioned to such districts, and the result of all such primary elections must be ratified by the next regular meeting of the association.

(2) An association may provide a fair remuneration for the time actually spent by its officers and directors in its service.

(3) No director during the term of his office shall be a party to a contract for profit with the association differing in any way from the business relations accorded regular members or holders of common stock of the association or to any other kind of contract differing from terms generally current in that district.

(4) When a vacancy on the board of directors occurs, other than by expiration of term, the remaining members of the board by a majority vote shall fill the vacancy unless the bylaws provided for an election of directors by district. In such a case the board of directors shall immediately call a special meeting of the members or stockholders in that district to fill the vacancy.

History: **En. Sec. 12, Ch. 233, L. 1921; re-en. Sec. 6439, R.C.M. 1921; re-en. Sec. 6439, R.C.M. 1935; R.C.M. 1947, 14-412.**

35-17-312. Officers — election — bank as treasurer. (1) The directors shall elect from their number a president and one or more vice presidents. They shall also elect a secretary and treasurer who need not be directors, and they may combine the two latter offices and designate the combined office as secretary-treasurer. The treasurer may be a bank or any depositary, in which case it may not be considered an officer but instead a function of the board of directors, and the secretary shall perform the usual accounting duties of the treasurer, except that the funds must be deposited only as authorized by the board of directors.

(2) (a) If the bylaws provide, the directors may also elect from their number a presiding officer and one or more vice presiding officers, in which case the president and vice presidents need not be directors or stockholders.

(b) Any other officer may be chosen as provided in the bylaws.

History: **En. Sec. 13, Ch. 233, L. 1921; re-en. Sec. 6440, R.C.M. 1921; re-en. Sec. 6440, R.C.M. 1935; R.C.M. 1947, 14-413; amd. Sec. 8, Ch. 130, L. 1999.**

Compiler's Comments

1999 Amendment: Chapter 130 inserted (2) providing that president and vice presidents need not be directors or stockholders in certain instances and if provided in bylaws; and made minor changes in style. Amendment effective October 1, 1999.

35-17-313. Removal of officer or director. (1) Any member may bring charges against an officer or director by filing them in writing with the secretary of the association, together with a petition signed by 10% of the members, requesting the removal of the officer or director in question. The removal shall be voted upon at the next regular or special meeting of the association, and by a vote of a majority of the members, the association may remove the officer or director and fill the vacancy. The director or officer against whom such charges have been brought shall be informed in writing of the charges previous to the meeting and shall have an opportunity at the meeting to be heard in person or by counsel and to present witnesses, and the person or persons bringing the charges against him shall have the same opportunity.

(2) In case the bylaws provide for election of directors by districts with primary elections in each district, then the petition for removal of a director must be signed by 12% of the members residing in the district from which he was elected. The board of directors must call a special meeting of the members residing in that district to consider the removal of the director. By a vote of the majority of the members of that district, the director in question shall be removed from office.

History: En. Sec. 15, Ch. 233, L. 1921; re-en. Sec. 6442, R.C.M. 1921; re-en. Sec. 6442, R.C.M. 1935; R.C.M. 1947, 14-415.

35-17-314. Referendum to membership of matters passed by board. Upon demand of a majority of the entire board of directors, any matter that has been approved or passed by the board must be referred to the entire membership or the stockholders for a decision at the next special or regular meeting. However, a special meeting may be called for the purpose.

History: En. Sec. 16, Ch. 233, L. 1921; re-en. Sec. 6443, R.C.M. 1921; re-en. Sec. 6443, R.C.M. 1935; R.C.M. 1947, 14-416; amd. Sec. 9, Ch. 130, L. 1999.

Compiler's Comments

1999 Amendment: Chapter 130 near beginning substituted "a majority of" for "40% of"; and made minor changes in style. Amendment effective October 1, 1999.

35-17-315. Creation of capital reserve — distribution of net earnings. At least once annually, the directors shall determine and distribute net proceeds as follows:

(1) (a) An association organized under this chapter may set aside part of its net earnings as its board of directors considers advisable for the purpose of creating or maintaining a capital reserve. In addition to the capital reserve, the directors may set aside a sum not to exceed 5% of the annual net earnings of the association, which must be used for the purposes of promoting and teaching cooperative organization and principles. The directors may establish and accumulate reserves for buildings, machinery and equipment, depreciation, losses, and other proper purposes.

(b) A share of the net proceeds may be set aside for or paid to employees. This amount for all purposes, except the computation of net proceeds, must be considered an expense of the association.

(c) In an association with capital stock, a dividend may be paid on the capital stock as authorized in the articles. A dividend may not be paid if the association's capital is impaired or the payment of the dividend would result in an impairment of capital.

(2) Net earnings in excess of any deductions in subsection (1) must be distributed annually to patrons on the basis of patronage. An association subject to the provisions of this chapter may distribute net earnings in the following or a combination of the following: cash, credits, stock, revolving fund certificates, other certificates, or securities of the association or of other associations.

History: En. 14-430 by Sec. 4, Ch. 298, L. 1977; R.C.M. 1947, 14-430; amd. Sec. 10, Ch. 130, L. 1999.

Compiler's Comments

1999 Amendment: Chapter 130 at beginning inserted "At least once annually, the directors shall determine and distribute net proceeds as follows"; inserted (1)(b) allowing share of net proceeds to be set aside for employees; inserted (1)(c) relating to dividend on capital stock; and made minor changes in style. Amendment effective October 1, 1999.

Part 4
Marketing Agreements

35-17-401. Marketing contracts. (1) The association and its members may make and execute marketing contracts requiring the members to sell, for any period of time not over 10 years, all or any specified part of their agricultural products or specified commodities exclusively to or through the association or any facilities to be created by the association. The contract may provide that the association may sell or resell the products of its members with or without taking title thereto and pay over to its members the resale price after deducting all necessary selling, overhead, and other costs and expenses.

(2) The bylaws and the marketing contract may fix, as liquidated damages, specific sums to be paid by the member or stockholder to the association upon the breach by him of any provisions of the marketing contract regarding the sale or delivery or withholding of products and may further provide that the member will pay all costs, premiums for bonds, expenses, and fees in case any action is brought upon the contract by the association, and any such provisions shall be valid and enforceable in the courts of this state.

(3) In the event of any such breach or threatened breach of such marketing contract by a member, the association shall be entitled to an injunction to prevent the further breach of the contract and to a decree of specific performance thereof. Pending the adjudication of such an action and upon filing a verified complaint showing the breach or threatened breach and upon filing a sufficient bond, the association shall be entitled to a temporary restraining order and preliminary injunction against the member.

History: En. Sec. 17, Ch. 233, L. 1921; re-en. Sec. 6444, R.C.M. 1921; re-en. Sec. 6444, R.C.M. 1935; R.C.M. 1947, 14-417.

35-17-402. Associations exempt from antimonopoly provisions. Associations executing marketing contracts in compliance with the provisions of this chapter shall not be deemed to be a conspiracy, a combination in restraint of trade, or an illegal monopoly or trust in an attempt to lessen competition or fix prices arbitrarily.

History: En. 14-417.1 by Sec. 1, Ch. 467, L. 1973; R.C.M. 1947, 14-417.1.

35-17-403. Recording marketing agreements. Any cooperative marketing association organized under the laws of this state or doing business in this state pursuant to the laws of this state may file for record its marketing agreements covering livestock, increase, wool, and other livestock products as hereinafter provided.

History: En. Sec. 1, Ch. 34, L. 1927; re-en. Sec. 6449.1, R.C.M. 1935; R.C.M. 1947, 14-423.

35-17-404. Requisites for filing. Such agreements shall be eligible for filing for record without being acknowledged before a notary public or other officer or without any affidavit of good faith or other formality but shall be signed by the member of the association and in the name of the association by a duly authorized officer of the association, and the corporate seal of the association shall be affixed.

History: En. Sec. 2, Ch. 34, L. 1927; re-en. Sec. 6449.2, R.C.M. 1935; R.C.M. 1947, 14-424.

35-17-405. Place of filing. Such agreements shall be filed in the office of the county clerk and recorder in the county where such livestock or livestock product is located on the date such agreement is so filed for record.

History: En. Sec. 3, Ch. 34, L. 1927; re-en. Sec. 6449.3, R.C.M. 1935; R.C.M. 1947, 14-425.

35-17-406. Recording as notice. Such recordation shall operate as constructive notice of the agreement and of the rights of the association and of its successors and assigns, as specified in the agreement and in this part.

History: En. Sec. 4, Ch. 34, L. 1927; re-en. Sec. 6449.4, R.C.M. 1935; R.C.M. 1947, 14-426.

35-17-407. When transfer of title effected on recording — lien not to extend to subsequent product. (1) In case such marketing agreement specifies that the member has agreed to sell and the association has agreed to buy the product specified in the agreement, produced by or for such member during a period of time in said agreement designated, and such agreement further provides that the association shall have the absolute title to such product and the right to enforce specific performance of the agreement and the power to borrow money thereon for any purpose of the association and that the association shall have all rights of ownership of such product without limitation, including the right to sell or pledge for its own account or as security for its own debts or otherwise, then such agreement, when so filed for record, shall operate to convey and transfer to such association full title to and possession of such product covered thereby, and any possession by the member thereafter shall be only as custodian for such association.

(2) Such agreement shall not apply or constitute any lien or encumbrance on any product derived subsequent to the term therein specified, and no release or satisfaction of such an agreement need be filed for record.

History: En. Sec. 5, Ch. 34, L. 1927; re-en. Sec. 6449.5, R.C.M. 1935; R.C.M. 1947, 14-427.

35-17-408. Assignment of agreement as security for loans. Such association shall have full power to transfer and assign all of its rights under such cooperative marketing agreement, containing the provisions specified in 35-17-407, as security for loans obtained by it. Such transfer and assignment may be by endorsement on the marketing agreement so filed for record or may be made by separate document which shall adequately describe the marketing agreement or the various agreements covered thereby. Any such assignment shall be eligible for record in the same manner as is herein provided for recording of cooperative agreements. Such assignments need not be acknowledged before a notary public or other officer or contain any affidavit of good faith or other formality but shall be signed in the name of the association by a duly authorized officer of the association and the corporate seal of the association shall be affixed. The assignee under any such assignment shall be subrogated to all the rights of the association under said cooperative marketing agreements and the provisions of this part.

History: **En. Sec. 6, Ch. 34, L. 1927; re-en. Sec. 6449.6, R.C.M. 1935; R.C.M. 1947, 14-428.**

35-17-409. Fees of county clerk. (1) The fees payable to the county clerk and recorder shall be as follows:

(a) 50 cents for each agreement so filed for record;

(b) 50 cents for each certificate of prior liens and mortgages;

(c) 50 cents for certifying to copy of marketing agreements so filed for record;

(d) 50 cents for each assignment which is filed separately from the marketing agreement or agreements covered thereby.

(2) The county clerk and recorder shall index such agreements and assignments in the index of chattel mortgages.

History: **En. Sec. 7, Ch. 34, L. 1927; re-en. Sec. 6449.7, R.C.M. 1935; R.C.M. 1947, 14-429.**

35-17-410. Agreements and arrangements with other associations. Any association may upon resolution adopted by its board of directors enter into all necessary and proper stipulations, agreements, and contracts and arrangements with any other cooperative corporation, association, or associations formed in this or in any other state for the cooperative and more economical carrying on of its business or any part or parts thereof. Any two or more associations may by agreement between them unite in employing and using or may separately employ and use the same methods, means, and agencies for carrying on and conducting their respective businesses.

History: **En. Sec. 19, Ch. 233, L. 1921; re-en. Sec. 6446, R.C.M. 1921; re-en. Sec. 6446, R.C.M. 1935; R.C.M. 1947, 14-419.**

Part 5

Merger, Consolidation, and Sale of Assets

35-17-501. Merger or consolidation authorized. It is lawful for two or more cooperative associations formed, before or after July 1, 1977, under the laws of the state of Montana to merge or consolidate with each other. One or more such associations may merge or consolidate with one or more associations incorporated under the laws of another state relating to organization of cooperative associations by complying with the provisions of this chapter or with the applicable laws of the state where the surviving or new association has its principal place of business.

History: **En. 14-431 by Sec. 5, Ch. 298, L. 1977; R.C.M. 1947, 14-431(1).**

35-17-502. Plan of merger or consolidation. Before an association may merge or consolidate with any other association, a written plan of merger or consolidation shall be prepared by the board of directors of one or both associations, by a committee appointed for that purpose by the board of directors of one or both associations, or by a committee composed of at least 10% of the stockholders of one of the associations concerned. Such plan shall set forth all the terms of the merger or consolidation and the proposed effect thereof on each of the stockholders of the associations concerned. In the case of consolidation, the plan shall also contain a copy of the proposed articles for the new association to be formed.

History: **En. 14-431 by Sec. 5, Ch. 298, L. 1977; R.C.M. 1947, 14-431(2).**

35-17-503. Meeting to consider plan — notice. (1) Notice of the proposed plan and, in the case of consolidation, of the proposed new articles shall be mailed to each stockholder of the associations to be affected thereby.

(2) The notice shall advise the stockholders of each association of the time and place that each association will meet, at which time the proposal shall be considered and voted upon by each association. The meetings may be held not less than 30 or more than 60 days after the mailing of notice. The plan shall be considered adopted if a quorum is present and two-thirds of those voting vote in its favor.

History: **En. 14-431 by Sec. 5, Ch. 298, L. 1977; R.C.M. 1947, 14-431(3), (4).**

35-17-504. Filing of documents of merger or consolidation — effective date. (1) Within 30 days after the merger or consolidation plan has been adopted, documents of merger or consolidation setting forth the plan and the manner of adoption thereof shall be signed by the president or vice-president and by the secretary or assistant secretary of each association merging or consolidating and filed with the clerk and recorder of the county in which the principal office of the new or surviving association is located, if the office is in Montana, and with the Montana secretary of state.

(2) If the new or surviving association has its principal office in Montana, the merger or consolidation becomes effective as of the date of filing with the Montana secretary of state. If its principal office is outside the state of Montana, the merger or consolidation becomes effective upon full compliance with the laws of the state in which its principal office is located.

History: **En. 14-431 by Sec. 5, Ch. 298, L. 1977; R.C.M. 1947, 14-431(5); amd. Sec. 158, Ch. 575, L. 1981; amd. Sec. 39, Ch. 174, L. 1983.**

35-17-505. Effect of merger or consolidation — rights and obligations — rights of creditors not impaired. (1) On the effective date, the associations which are parties to a plan adopted pursuant to this part become a single association. In the case of a merger, the surviving association is that association so designated in the plan. The articles and bylaws of the surviving association are amended to the extent provided in the documents setting forth the plan of merger. In the case of a consolidation, the new association is the association provided for in the plan. The separate existence of all associations which are parties to the plan, except the surviving or new association, then ceases.

(2) The surviving or new association possesses all the rights and all the property of each of the individual associations and is responsible for all their obligations. Title to any property is vested in the surviving or new association with no reversion or impairment thereof caused by the merger or consolidation.

(3) No right of any creditor may be impaired by the merger or consolidation without his consent.

History: **En. 14-431 by Sec. 5, Ch. 298, L. 1977; R.C.M. 1947, 14-431(7); amd. Sec. 159, Ch. 575, L. 1981.**

35-17-506. Sale or disposition of assets. At any meeting, the stockholders of a cooperative association may authorize the disposition or sale of all or substantially all of the association's assets if notice that such disposition or sale will be considered at such meeting has been given to all persons entitled to vote thereon and if disposition or sale is approved by two-thirds of those stockholders voting at the meeting.

History: **En. 14-431 by Sec. 5, Ch. 298, L. 1977; R.C.M. 1947, 14-431(6).**

Cross-References

Dissolution and liquidation of business corporations, Title 35, ch. 1, part 9.

Dissolution and liquidation of nonprofit corporations, Title 35, ch. 2, part 7.

Involuntary corporate dissolution, Title 35, ch. 6.

Dissolution and winding up of partnerships in general, Title 35, ch. 10, part 6.

Dissolution of limited partnerships, Title 35, ch. 12, part 12.

Sale or disposition of assets of cooperative associations, 35-15-506.

Dissolution of rural cooperative utilities, 35-18-404, 35-18-405.

35-17-507. Statute of limitations. No action may be maintained to invalidate any sale, merger, or consolidation taken pursuant to this chapter because of the manner of its adoption unless the action is commenced within 2 years after the required filings have been made in relation to such corporate action or, if none is required, after the effective date of such corporate action.

History: **En. 14-431 by Sec. 5, Ch. 298, L. 1977; R.C.M. 1947, 14-431(8).**

CHAPTER 18

RURAL COOPERATIVE UTILITIES

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35-18-510. Repealed.

Chapter Cross-References

Power and energy companies, Title 69, ch. 5.

Part 1
General

35-18-101. Short title. This chapter may be cited as the “Rural Electric and Telephone Cooperative Act”.

History: En. Sec. 1, Ch. 172, L. 1939; amd. Sec. 1, Ch. 80, L. 1957; R.C.M. 1947, 14-501.

35-18-102. Definitions. (1) Corporations organized under this chapter and corporations which become subject to this chapter in the manner hereinafter provided are hereinafter referred to as “cooperatives”.

(2) In this chapter, unless the context otherwise requires the following definitions apply:

(a) “Cable television system” means a system that receives and amplifies the signals broadcast by one or more television stations and redistributes the signals to subscribing members of the public for a fixed or periodic fee by wire, cable, microwave, or other means, whether such means are owned or leased.

(b) “Broadband” means transmission facilities capable of handling frequencies greater than those required for high grade voice communication (higher than 4 kilohertz).

(c) “Member” means each incorporator of a cooperative and each person admitted to and retaining membership therein and shall include a husband and wife admitted to joint membership.

(d) "Person" includes any natural person, firm, association, corporation, business trust, partnership, federal agency, state or political subdivision or agency thereof, or any body politic.

(e) "Rural area", as applied to all corporations organized under the provisions of 35-18-105(1), means any area not included within the boundaries of any incorporated or unincorporated city, town, village, or borough having a population in excess of 3,500 persons on March 17, 1939, or subsequent thereto, and every incorporated municipality in which 95% or more of the premises are served by an electric cooperative on February 1, 1971.

History: (1)En. Sec. 2, Ch. 172, L. 1939; amd. Sec. 2, Ch. 80, L. 1957; amd. Sec. 9, Ch. 7, L. 1971; Sec. 14-502, R.C.M. 1947; (2)En. Sec. 30, Ch. 172, L. 1939; amd. Sec. 1, Ch. 151, L. 1949; amd. Sec. 9, Ch. 80, L. 1957; amd. Sec. 10, Ch. 7, L. 1971; Sec. 14-530, R.C.M. 1947; R.C.M. 1947, 14-502(part), 14-530; amd. Sec. 1, Ch. 237, L. 1979; amd. Sec. 1, Ch. 208, L. 1981; amd. Sec. 2, Ch. 168, L. 1987.

35-18-103. Construction. This chapter shall be construed liberally. The enumeration of any object, purpose, power, manner, method, or thing shall not be deemed to exclude like or similar objects, purposes, powers, manners, methods, or things.

History: En. Sec. 31, Ch. 172, L. 1939; R.C.M. 1947, 14-531.

35-18-104. Exemption from jurisdiction of the public service commission. Cooperatives and foreign corporations transacting business in this state pursuant to this chapter shall be exempt in all respects from the jurisdiction and control of the public service commission of this state.

History: En. Sec. 29, Ch. 172, L. 1939; R.C.M. 1947, 14-529.

Cross-References

Regulation of utilities, Title 69, ch. 3.

Utility lines and facilities provisions, Title 69, ch. 4.

35-18-105. Permissible purposes for incorporation. Cooperative nonprofit membership corporations may be organized under this chapter:

(1) for the purpose of supplying electric energy and promoting and extending the use of electric energy in rural areas, as provided in this chapter;

(2) for the purposes of making generally available adequate telephone service, cable television service, or broadband facilities through the improvement and expansion of existing telephone, cable television, or broadband facilities and the construction and operation of additional facilities as are required to assure the availability of service to the widest practicable number of users of telephone service, cable television service, or broadband facilities; and

(3) for purposes allowable under federal authorization, including rural economic development activities.

History: En. Sec. 2, Ch. 172, L. 1939; amd. Sec. 2, Ch. 80, L. 1957; amd. Sec. 9, Ch. 7, L. 1971; R.C.M. 1947, 14-502(part); amd. Sec. 2, Ch. 237, L. 1979; amd. Sec. 1, Ch. 254, L. 1985; amd. Sec. 3, Ch. 168, L. 1987; amd. Sec. 1, Ch. 61, L. 1993.

35-18-106. Powers of cooperatives. A cooperative has power to:

(1) sue and be sued in its corporate name;

(2) have perpetual existence;

(3) adopt a corporate seal and alter the same at pleasure;

(4) become a member in one or more other cooperatives or corporations or to own stock in other cooperatives or corporations;

(5) construct, purchase, take, receive, lease as lessee, or otherwise acquire and to own, hold, use, equip, maintain, and operate and sell, assign, transfer, convey, exchange, lease as lessor, mortgage, pledge, or otherwise dispose of or encumber electric transmission and distribution lines or systems, electric generating plants, electric refrigeration plants, telephone lines, facilities or systems (but not telegraph or radio broadcasting services or facilities) as defined by law, lands, buildings, structures, dams, plants and equipment, and all kinds or classes of real or personal property, which may be considered necessary, convenient, or appropriate to accomplish the purpose for which the cooperative is organized;

(6) purchase or otherwise acquire and own, hold, use, and exercise and sell, assign, transfer, convey, mortgage, pledge, hypothecate, or otherwise dispose of or encumber franchises, rights, privileges, licenses, rights-of-way, and easements;

(7) borrow money and otherwise contract indebtedness and issue notes, bonds, and other evidences of indebtedness and secure the payment of indebtedness by mortgage, pledge, deed of trust, or any other encumbrance upon all of its then owned or after-acquired real or personal property, assets, franchises, revenues, or income;

(8) construct, maintain, and operate electric transmission and distribution lines or telephone, cable television, or broadband lines, facilities, or systems along, upon, under, and across all public thoroughfares, including without limitation all roads, highways, streets, alleys, bridges, and causeways and upon, under, and across all publicly owned lands, subject, however, to the same requirements in respect of the use of the thoroughfares and lands as are imposed by the respective authorities having jurisdiction of them upon corporations constructing or operating electric transmission and distribution lines or systems or telephone lines, facilities, or systems;

(9) exercise the power of eminent domain in the manner provided by the laws of this state for the exercise of that power by corporations constructing or operating electric transmission and distribution lines or systems or telephone lines, facilities, or systems;

(10) conduct its business and exercise all of its powers within or without this state;

(11) adopt, amend, and repeal bylaws;

(12) in the case of corporations organized under the provisions of 35-18-105(1):

(a) generate, manufacture, purchase, acquire, accumulate, and transmit electric energy and distribute, sell, supply, and dispose of electric energy in rural areas to its members, to governmental agencies and political subdivisions, and to other persons not in excess of 10% of the number of its members;

(b) make loans to persons to whom electric energy is or will be supplied by the cooperative for the purpose of and otherwise to assist those persons in wiring their premises and installing in their premises electrical and plumbing fixtures, appliances, apparatus, and equipment of all kinds and character and, in connection with electrical and plumbing fixtures, purchase, acquire, lease, sell, distribute, install, and repair the electrical and plumbing fixtures, appliances, apparatus, and equipment and accept or otherwise acquire and sell, assign, transfer, endorse, pledge, hypothecate, and otherwise dispose of notes, bonds, and other evidences of indebtedness and all types of security for electrical and plumbing fixtures;

(c) make loans to persons to whom electric energy is or will be supplied by the cooperatives for the purpose of and otherwise to assist those persons in constructing, maintaining, and operating electric refrigeration plants;

(13) in the case of corporations organized under the provisions of 35-18-105(2):

(a) improve and expand existing telephone lines, facilities, and systems and construct, acquire, operate, and furnish additional telephone lines, facilities, and systems as are required to assure the availability of adequate telephone service to the widest practicable number of users of telephone service;

(b) make loans to persons to whom telephone service is or will be supplied by the cooperative for the purpose of and otherwise to assist those persons in wiring their premises for telephone service and installing in their premises telephone fixtures, appliances, apparatus, and equipment of all kinds and character and, in connection with telephone fixtures, purchase, acquire, lease, sell, distribute, install, and repair the telephone fixtures, appliances, apparatus, and equipment and accept or otherwise acquire and sell, assign, transfer, endorse, pledge, hypothecate, and otherwise dispose of notes, bonds, and other evidences of indebtedness and all types of security for telephone fixtures;

(14) do and perform all other acts and things and have and exercise all other powers that may be necessary, convenient, or appropriate to accomplish the purpose for which the cooperative is organized or authorized under federal law.

History: En. Sec. 3, Ch. 172, L. 1939; amd. Sec. 3, Ch. 80, L. 1957; R.C.M. 1947, 14-503; amd. Sec. 3, Ch. 237, L. 1979; amd. Sec. 2, Ch. 254, L. 1985; amd. Sec. 4, Ch. 168, L. 1987; amd. Sec. 2, Ch. 61, L. 1993.

Cross-References

Articles of incorporation, 35-18-203.
Bylaws, 35-18-207.
Disposition or encumbrance of property, 35-18-317.
Merger or consolidation, 35-18-403.

35-18-107. Foreign corporations. (1) Any corporation organized under the laws of a state adjacent to this state on a nonprofit or a cooperative basis for the purpose of supplying electric energy in rural areas and owning and operating electric transmission or distribution lines in such state shall be permitted to extend its lines into and transact business in this state without complying with any statute of this state pertaining to the qualification of foreign corporations for the transaction of business in this state.

(2) Any such foreign corporation, as a prerequisite to the extension of its lines into and the transaction of business in this state, shall, by an instrument executed and acknowledged in its behalf by its president or vice-president under its corporate seal attested by its secretary, designate the secretary of state its agent to accept service of process in its behalf. In the event any process shall be served upon the secretary of state, he shall forthwith forward the same by registered or certified mail to such corporation at the address thereof specified in such instrument.

(3) Any such corporation may sue and be sued in the courts of this state to the same extent that a cooperative may sue or be sued in such courts.

(4) Any such foreign corporation may secure its notes, bonds, or other evidences of indebtedness by mortgage, pledge, deed of trust, or other encumbrance upon any or all of its then-owned or after-acquired real or personal property, assets, or franchises located or to be located in this state and also upon the revenues and income to be derived therefrom.

History: En. Sec. 26, Ch. 172, L. 1939; R.C.M. 1947, 14-526.

Cross-References

Merger, consolidation, dissolution, and winding up, Title 35, ch. 18, part 4.

35-18-108. Waiver of notice. (1) Whenever any notice is required to be given under the provisions of this chapter or under the provisions of the articles of incorporation or bylaws of a cooperative, waiver thereof in writing, signed by the person or persons entitled to such notice whether before or after the time fixed for the giving of such notice, shall be deemed equivalent to such notice.

(2) If a person or persons entitled to notice of a meeting shall attend such meeting, such attendance shall constitute a waiver of notice of the meeting, except in case the attendance is for the express purpose of objecting to the transaction of any business because the meeting shall not have been lawfully called or convened.

History: En. Sec. 24, Ch. 172, L. 1939; R.C.M. 1947, 14-524.

Cross-References

Meetings of members, 35-18-303.

35-18-109. No area restriction — telephone cooperatives. A telephone cooperative, regardless of when it was organized pursuant to 35-18-105, is not restricted by population of area served or other criteria to any area of service.

History: En. Sec. 1, Ch. 168, L. 1987.

Part 2

Formation — Articles of Incorporation — Bylaws

Part Cross-References

Formation, articles of incorporation, and bylaws of business corporations, Title 35, ch. 1, part 2.

Formation, articles of incorporation, and bylaws of nonprofit corporations, Title 35, ch. 2, part 2.

Formation of religious corporations sole, Title 35, ch. 3, part 2.

Organization of professional service corporations, Title 35, ch. 4, part 2.

Formation and operation of business trusts, Title 35, ch. 5, part 2.

Formation of limited partnerships, Title 35, ch. 12, part 6.

Formation of mining partnerships, Title 35, ch. 13, part 1.

Formation, articles of incorporation, and bylaws of cooperative associations, Title 35, ch. 15, part 2.

Formation of agricultural associations, Title 35, ch. 16, part 2.

Formation of cooperative agricultural marketing associations, Title 35, ch. 17, part 2.

35-18-201. Name. (1) The name of each cooperative shall include the words “electric” or “telephone” and “cooperative” and the abbreviation “Inc.”; provided, however, such limitations shall not apply if, in an affidavit made by the president or vice-president of a cooperative and filed with the secretary of state, it shall appear that the cooperative desires to transact business in another state and is precluded therefrom by reason of its name.

(2) The name of a cooperative shall distinguish it from the name of any other corporation organized under the laws of or authorized to transact business in this state.

(3) The words "electric" or "telephone" and "cooperative" shall not both be used in the name of any corporation organized under the laws of or authorized to transact business in this state, except a cooperative or a corporation transacting business in this state pursuant to the provisions of this chapter.

History: En. Sec. 4, Ch. 172, L. 1939; amd. Sec. 4, Ch. 80, L. 1957; R.C.M. 1947, 14-504.

Cross-References

Assumed business names, Title 30, ch. 13, part 2.

Exclusivity of corporate name, 30-13-202.

Business corporation — corporate name, Title 35, ch. 1, part 3.

Business trust name, 35-5-201.

Acquisition of new name by dissolved corporation upon reinstatement, 35-6-203.

Restrictions on limited partnership names, 35-12-505.

35-18-202. Incorporators. Five or more natural persons or two or more cooperatives may organize a cooperative in the manner hereinafter provided.

History: En. Sec. 5, Ch. 172, L. 1939; R.C.M. 1947, 14-505.

Cross-References

Members, 35-18-301.

Incorporators' role in dissolution, 35-18-404.

35-18-203. Articles of incorporation. (1) The articles of incorporation of a cooperative shall recite in the caption that they are executed pursuant to this chapter, shall be signed by each of the incorporators, and shall state:

(a) the name of the cooperative;

(b) the address of its principal office;

(c) the names and addresses of the incorporators;

(d) the names and addresses of the persons who shall constitute its first board of trustees; and

(e) any provisions not inconsistent with this chapter deemed necessary or advisable for the conduct of its business and affairs.

(2) In addition to provisions required in subsection (1), the articles of incorporation may also contain provisions not inconsistent with law regarding liability as set forth in 35-1-216.

(3) Such articles of incorporation shall be submitted to the secretary of state for filing as provided in this chapter.

(4) It shall not be necessary to set forth in the articles of incorporation of a cooperative the purpose for which it is organized or any of the corporate powers vested in a cooperative under this chapter.

History: En. Sec. 6, Ch. 172, L. 1939; R.C.M. 1947, 14-506; amd. Sec. 40, Ch. 174, L. 1983; amd. Sec. 6, Ch. 559, L. 1987; amd. Sec. 211, Ch. 368, L. 1991.

Cross-References

Effect of merger or consolidation, 35-18-403.

Filings and fees, Title 35, ch. 18, part 5.

35-18-204. Amendment of articles of incorporation. A cooperative may amend its articles of incorporation by complying with the following requirements:

(1) The proposed amendment shall be first approved by the board of trustees and shall then be submitted to a vote of the members at any annual

or special meeting thereof, the notice of which shall set forth the proposed amendment. The proposed amendment, with such changes as the members shall choose to make therein, shall be deemed to be approved on the affirmative vote of not less than two-thirds of those members voting thereon at such meeting.

(2) Upon such approval by the members, articles of amendment shall be executed on behalf of the cooperative by its president or vice-president and its corporate seal shall be affixed thereto and attested by its secretary. The articles of amendment shall recite in the caption that they are executed pursuant to this chapter and shall state:

(a) the name of the cooperative;

(b) the address of its principal office;

(c) the date of the filing of its articles of incorporation in the office of the secretary of state; and

(d) the amendment to its articles of incorporation.

(3) The president or vice-president executing such articles of amendment shall also make and annex thereto an affidavit stating that the provisions of this section were duly complied with.

(4) Such articles of amendment and affidavit shall be submitted to the secretary of state for filing as provided in this chapter.

History: **En. Sec. 12, Ch. 172, L. 1939; R.C.M. 1947, 14-512(a); amd. Sec. 41, Ch. 174, L. 1983.**

Cross-References

Amendments of articles of incorporation of cooperative associations, 35-15-205.

Amendments of articles of incorporation of cooperative agricultural marketing associations, 35-17-203.

Amendments of articles of incorporation of rural cooperative utilities, 35-18-501.

35-18-205. Change of principal office without amendment. A cooperative may, without amending its articles of incorporation, upon authorization of its board of trustees, change the location of its principal office by filing a certificate of change of principal office executed by its president or vice-president, under its seal attested by its secretary, in the office of the secretary of state and also in each county office in which its articles of incorporation or any prior certificate of change of principal office of such cooperative has been filed and paying the fees prescribed in this chapter in connection therewith. Such cooperative shall also, within 30 days after the filing of such certificate of change of principal office in any county office, file therein certified copies of its articles of incorporation and all amendments thereto, if not already on file therein.

History: **En. Sec. 12, Ch. 172, L. 1939; R.C.M. 1947, 14-512(b); amd. Sec. 42, Ch. 174, L. 1983.**

Cross-References

Filing fees, 35-18-502.

35-18-206. Existing corporations — reorganization under this chapter — articles of conversion. Any corporation organized under the laws of this state for the purpose, among others, of supplying electric energy in rural areas or telephone service may become subject to this chapter with the same effect as if originally organized under this chapter by complying with the following requirements:

(1) The proposition for the conversion of such corporation into a cooperative under this chapter and proposed articles of conversion to give effect thereto shall be first approved by the board of trustees or the board of directors, as the case may be, of such corporation. The proposed articles of conversion shall recite in the caption that they are executed pursuant to this chapter and shall state:

(a) the name of the corporation prior to its conversion into a cooperative under this chapter;

(b) the address of the principal office of such corporation;

(c) the date of the filing of its articles of incorporation in the office of the secretary of state;

(d) the statute or statutes under which such corporation was organized;

(e) the name assumed by such corporation;

(f) a statement that such corporation elects to become a cooperative, nonprofit, membership corporation subject to this chapter;

(g) the manner and basis of converting either memberships in or shares of stock of such corporation into memberships therein after completion of the conversion; and

(h) any provisions not inconsistent with this chapter deemed necessary or advisable for the conduct of its business and affairs.

(2) The proposition for the conversion of such corporation into a cooperative under this chapter and the proposed articles of conversion approved by the board of trustees or board of directors, as the case may be, of such corporation shall then be submitted to a vote of the members or stockholders, as the case may be, of such corporation at any duly held annual or special meeting thereof, the notice of which shall set forth full particulars concerning the proposed conversion. The proposition for the conversion of such corporation into a cooperative under this chapter and the proposed articles of conversion, with such amendments thereto as the members or stockholders of such corporation shall choose to make therein, shall be deemed to be approved upon the affirmative vote of not less than two-thirds of those members of such corporation voting thereon at such meeting or, if such corporation is a stock corporation, upon the affirmative vote of the holders of not less than two-thirds of the capital stock of such corporation represented at such meeting.

(3) Upon such approval by the members or stockholders of such corporation, articles of conversion in the form approved by such members or stockholders of such corporation shall be executed on behalf of such corporation by its president or vice-president and its corporate seal shall be affixed thereto and attested by its secretary or assistant secretary. The president or vice-president executing such articles of conversion on behalf of such corporation shall also make and annex thereto an affidavit stating that the provisions of this section with respect to the approval of its trustees or directors and its members or stockholders of the proposition for the conversion of such corporation into a cooperative under this chapter and such articles of conversion were duly complied with.

(4) Such articles of conversion and affidavit shall be submitted to the secretary of state for filing as provided in this chapter.

(5) The term "articles of incorporation" as used in this chapter shall be deemed to include the articles of conversion of a converted corporation.

History: En. Sec. 16, Ch. 172, L. 1939; amd. Sec. 7, Ch. 80, L. 1957; R.C.M. 1947, 14-516; amd. Sec. 43, Ch. 174, L. 1983; amd. Sec. 5, Ch. 168, L. 1987.

Cross-References

Shares of business corporations, Title 35, ch. 1, part 6.

Shares of cooperative associations, Title 35, ch. 15, part 4.

Stockholder provisions of agricultural associations, Title 35, ch. 16, part 2.

Stock of cooperative agricultural marketing associations, 35-17-302.

Filing and fees for articles of conversion, 35-18-501, 35-18-502.

35-18-207. Bylaws. The original bylaws of a cooperative shall be adopted by its board of trustees. Thereafter bylaws shall be adopted, amended, or repealed by its members. The bylaws shall set forth the rights and duties of members and trustees and may contain other provisions for the regulation and management of the affairs of the cooperative not inconsistent with this chapter or with the articles of incorporation.

History: En. Sec. 7, Ch. 172, L. 1939; R.C.M. 1947, 14-507.

Part 3
Operation — Members, Trustees, and Officers

Part Cross-References

Directors and officers of business corporations, Title 35, ch. 1, part 4.

Directors and officers of nonprofit corporations, Title 35, ch. 2, part 4.

Shareholders, directors, and officers of cooperative associations, Title 35, ch. 15, part 3.

Members and directors of agricultural associations, Title 35, ch. 16, part 3.

Members, directors, and officers of cooperative agricultural marketing associations, Title 35, ch. 17, part 3.

35-18-301. Members. (1) No person who is not an incorporator shall become a member of a cooperative unless such person shall agree to use electric energy or telephone service furnished by the cooperative when such electric energy or telephone service shall be available through its facilities. The bylaws may provide that any person, including an incorporator, shall cease to be a member of a cooperative if he shall fail or refuse to use electric energy or telephone service made available by the cooperative or if electric energy or telephone service shall not be made available to such person by the cooperative within a specified time after such person shall have become a member thereof.

(2) Membership in the cooperative shall not be transferable, except as provided in the bylaws. The bylaws may prescribe additional qualifications and limitations in respect to membership.

History: En. Sec. 8, Ch. 172, L. 1939; amd. Sec. 5, Ch. 80, L. 1957; R.C.M. 1947, 14-508(a).

35-18-302. Nonliability of members for debts of cooperative. The private property of the members of a cooperative shall be exempt from execution for the debts of the cooperative, and no member shall be liable or responsible for any debts of the cooperative.

History: En. Sec. 22, Ch. 172, L. 1939; R.C.M. 1947, 14-522.

Cross-References

Property exempt from execution, Title 25, ch. 13, part 6.

Effect of merger or consolidation on liabilities, 35-18-403.

Liabilities under dissolution and winding up of cooperatives, 35-18-404, 35-18-405.

35-18-303. Meetings of members — general and special — place — notice — quorum — voting. (1) An annual meeting of the members shall be held at such time as shall be provided in the bylaws.

(2) Special meetings of the members may be called by the board of trustees, by any three trustees, by not less than 10% of the members, or by the president.

(3) Meetings of members shall be held at such place as may be provided in the bylaws. In the absence of any such provision, all meetings shall be held at such place as shall be determined by the board of trustees.

(4) Except as hereinafter otherwise provided, written or printed notice stating the time and place of each meeting of members and, in the case of a special meeting, the purpose or purposes for which the meeting is called shall be given to each member, either personally or by mail, not less than 10 or more than 25 days before the date of the meeting.

(5) Five percent of all members present in person or 50 members present in person, whichever is fewer, shall constitute a quorum for the transaction of business at all meetings of the members, but the bylaws may prescribe the presence of a greater percentage or number of the members for a quorum. If less than a quorum is present at any meeting, a majority of those present in person may adjourn the meeting from time to time without further notice.

(6) Each member shall be entitled to one vote on each matter submitted to a vote at a meeting. Voting shall be in person but, if the bylaws so provide, may also be by proxy or by mail, or both. If the bylaws provide for voting by proxy or by mail, they shall also prescribe the conditions under which proxy or mail voting or both shall be exercised. In any event, no person shall vote as a proxy for more than three members at any meeting of the members.

History: En. Sec. 8, Ch. 172, L. 1939; amd. Sec. 5, Ch. 80, L. 1957; R.C.M. 1947, 14-508(b) thru (g); amd. Sec. 1, Ch. 131, L. 1981.

35-18-304. Initiative by members — approval of trustees not required. (1) Notwithstanding any other provision of this chapter, there shall be submitted to the members of a cooperative any proposition embodied in a petition signed by not less than 10% of its members, together with any document submitted with such petition to give the effect to the proposition, either at a special meeting of the members held within 45 days after the presentation of such petition or, if the date of the next annual meeting of members falls within 90 days after such presentation or if the petition so requests, at such annual meeting.

(2) The approval of the board of trustees shall not be required in respect of any proposition or document submitted to the members pursuant to this section and approved by them, but such proposition or document shall be subject to all other applicable provisions of this chapter. The affidavit or affidavits required to be filed with any such document pursuant to applicable provisions of this chapter shall, in such case, be modified to show compliance with the provisions of this section.

History: En. Sec. 17, Ch. 172, L. 1939; R.C.M. 1947, 14-517.

35-18-305 through 35-18-310 reserved.

35-18-311. Board of trustees — number — qualifications — removal — compensation — husband and wife. (1) The business and affairs of a cooperative must be managed by a board of not less than five trustees, each of whom must be a member of the cooperative or of another cooperative that is a member of the cooperative. The bylaws must prescribe the number of trustees, their qualifications, other than those provided for in this chapter, the manner of holding meetings of the board of trustees and of the election of successors to trustees who resign, die, or are otherwise incapable of acting. The bylaws may also provide for the removal of trustees from office and for the election of their successors.

(2) Without approval of the membership, trustees:

(a) may not receive any salaries for their services as trustees, except trustees may receive the same insurance coverage provided to cooperative employees; and

(b) except in emergencies, may not be employed by the cooperative in any capacity involving compensation.

(3) The bylaws may provide that the board of trustees may establish a fixed sum, including expenses of attendance, if any, to be allowed for:

(a) attendance at each meeting of the board of trustees or any committee of the board of trustees; or

(b) representing the cooperative at any meeting or on any business whenever representation has been approved by the board.

(4) If a husband and wife hold joint membership in a cooperative, either one but not both may be elected a trustee.

(5) The policies of the cooperative may provide that benefits provided to employees may be extended to trustees.

History: En. Sec. 9, Ch. 172, L. 1939; amd. Sec. 1, Ch. 208, L. 1965; R.C.M. 1947, 14-509(a), (d); amd. Sec. 1, Ch. 237, L. 1981; amd. Sec. 1, Ch. 41, L. 1993.

35-18-312. Trustees — term — quorum — powers. (1) The trustees of a cooperative named in any articles of incorporation, consolidation, merger, or conversion, as the case may be, shall hold office until the next following annual meeting of the members or until their successors shall have been elected and qualified. At each annual meeting or, in case of failure to hold the annual meeting as specified in the bylaws, at a special meeting called for that purpose, the members shall elect trustees who may serve for 1-, 2-, or 3-year terms. Each trustee shall hold office for the term for which he is elected or until his successor shall have been elected and qualified.

(2) A majority of the board of trustees shall constitute a quorum.

(3) The board of trustees may exercise all of the powers of a cooperative, except such as are conferred upon the members by this chapter or its articles of incorporation or bylaws.

History: En. Sec. 9, Ch. 172, L. 1939; amd. Sec. 1, Ch. 208, L. 1965; R.C.M. 1947, 14-509(b), (c), (e).

35-18-313. Voting districts. (1) Notwithstanding any other provisions of this chapter, the bylaws may provide that the territory in which a cooperative supplies electric energy or telephone service to its members shall be divided into two or more voting districts and that in respect to each such voting district:

(a) a designated number of trustees shall be elected by the members residing therein;

(b) a designated number of delegates shall be elected by the members residing therein; or

(c) both such trustees and delegates shall be elected by such members.

(2) In any such case the bylaws shall prescribe the manner in which such voting districts and the members thereof and the delegates and trustees, if any, elected therefrom shall function and the powers of the delegates, which may include the power to elect trustees.

(3) No member at any voting district meeting and no delegate at any meeting shall vote by proxy or by mail.

History: En. Sec. 10, Ch. 172, L. 1939; amd. Sec. 6, Ch. 80, L. 1957; R.C.M. 1947, 14-510.

35-18-314. Officers. The officers of a cooperative shall consist of a president, vice-president, secretary, and treasurer who shall be elected annually by and from the board of trustees. No person shall continue to hold any of the above offices after he shall have ceased to be a trustee. The offices of secretary and of treasurer may be held by the same person. The board of trustees may also elect or appoint such other officers, agents, or employees as it shall deem necessary or advisable and shall prescribe the powers and duties thereof. Any officer may be removed from office and his successor elected in the manner prescribed in the bylaws.

History: En. Sec. 11, Ch. 172, L. 1939; R.C.M. 1947, 14-511.

35-18-315. Authority to take acknowledgments — officer, trustee, or member. No person who is authorized to take acknowledgments under the laws of this state shall be disqualified from taking acknowledgments of instruments executed in favor of a cooperative or to which it is a party by reason of being an officer, director, or member of such cooperative.

History: En. Sec. 25, Ch. 172, L. 1939; R.C.M. 1947, 14-525.

35-18-316. Refunds to members — retention of unclaimed refunds. (1) Revenue of a cooperative for any fiscal year must, unless otherwise determined by a vote of the members, be distributed by the cooperative to its members as patronage refunds prorated in accordance with the patronage of the cooperative by the respective members paid for during the fiscal year, whenever the revenue exceeds the amount necessary to:

(a) defray expenses of the cooperative and of the operation and maintenance of its facilities during the fiscal year;

(b) pay interest and principal obligations of the cooperative coming due in the fiscal year;

(c) finance or provide a reserve for the financing of the construction or acquisition by the cooperative of additional facilities to the extent determined by the board of trustees;

(d) provide a reasonable reserve for working capital;

(e) provide a reserve for the payment of indebtedness of the cooperative maturing more than 1 year after the date of the incurrence of the indebtedness in an amount not less than the total of the interest and principal payments required to be made during the next fiscal year; and

(f) provide a fund, which may be not less than 2% or more than 5% of the balance remaining, for education in cooperation and for the dissemination of information concerning the effective use of electric energy and other services made available by the cooperative.

(2) Nothing contained in this section may be construed to prohibit the payment by a cooperative of all or any part of its indebtedness prior to the date when the payment becomes due.

(3) A cooperative shall, upon the action of the board of trustees, retain patronage refunds allocated to its members that remain unclaimed for a period of 5 years after the end of the year in which the refunds are given. Refunds retained by the cooperative must be used for educational purposes.

History: En. Sec. 20, Ch. 172, L. 1939; R.C.M. 1947, 14-520; amd. Sec. 1, Ch. 263, L. 1993.

Cross-References

Distributions to members under dissolution and winding up proceedings, 35-18-405.

35-18-317. Disposition or encumbrance of property. (1) Except as provided in subsection (2), a cooperative may not sell, mortgage, lease, or otherwise dispose of or encumber all or any substantial portion of its property unless such sale, mortgage, lease, or other disposition or encumbrance is authorized at a duly held meeting of members thereof by the affirmative vote of not less than two-thirds of all the members of the cooperative and unless the notice of such proposed sale, mortgage, lease, or other disposition or encumbrance shall have been contained in the notice of the meeting.

(2) The board of trustees of a cooperative, without authorization by the members thereof, shall have full power and authority to authorize the execution and delivery of a mortgage or mortgages or a deed or deeds of trust upon or the pledging or encumbrancing of any or all of the property, assets, rights, privileges, licenses, franchises, and permits of the cooperative, whether acquired or to be acquired and wherever situated, as well as the revenues and income therefrom, all upon such terms and conditions as the board of trustees shall determine, to secure any indebtedness of the cooperative to the United States of America or any instrumentality or agency thereof or to any other financing sources within the United States.

(3) Before a meeting is held to vote on authorization of disposition of cooperative property, the board of trustees shall:

(a) have the property appraised by three appraisers chosen by the board and not associated with the cooperative or a proposed buyer of cooperative property;

(b) notify all cooperative members, at least 90 days in advance, of a meeting to vote on disposition of cooperative property. Detailed proposals for disposition of such property must accompany the notice.

(c) at least 30 days before the meeting, notify all other cooperatives situated and operating in the state that the property is available for disposition and include with the notice one copy of each appraisal on the cooperative property; and

(d) at least 30 days before the meeting, mail to all members any alternative proposal made by cooperative members if it has been submitted to the board and signed by 50 or more members.

(4) The vote on property disposition may take place at an annual meeting if the board notifies the members as provided in this section.

(5) This section does not apply to the transfer of cooperative property in a merger or consolidation of cooperatives.

History: En. Sec. 21, Ch. 172, L. 1939; amd. Sec. 1, Ch. 17, L. 1971; R.C.M. 1947, 14-521; amd. Sec. 1, Ch. 289, L. 1987.

Cross-References

Powers of rural cooperative utilities, 35-18-106.

Disposition of property under merger, consolidation, and dissolution, Title 35, ch. 18, part 4.

35-18-318. Long-term indebtedness — membership approval. Before a cooperative may create or enter into an agreement that results in any direct or indirect obligation for the repayment of long-term bonded indebtedness for financing directly or indirectly the construction, maintenance, or operation of nuclear power generating facilities that may result in a rate increase to the cooperative's members for repayment of the obligation, the cooperative must receive approval from a majority of those members present and voting at the meeting. The approval must be obtained at a special meeting held for that purpose.

History: En. Sec. 1, Ch. 206, L. 1983.

Part 4

Merger, Consolidation, and Dissolution

35-18-401. Procedure for merger. Any one or more cooperatives, each of which is hereinafter designated a "merging cooperative", may merge into another cooperative, hereinafter designated the "surviving cooperative" by complying with the following requirements:

(1) The proposition for the merger of the merging cooperatives into the surviving cooperative and proposed articles of merger to give effect thereto shall be first approved by the board of trustees of each merging cooperative and by the board of trustees of the surviving cooperative. The proposed articles of merger shall recite in the caption that they are executed pursuant to this chapter and shall state:

(a) the name of each merging cooperative, the address of its principal office, and the date of the filing of its articles of incorporation in the office of the secretary of state;

(b) the name of the surviving cooperative and the address of its principal office;

(c) a statement that the merging cooperatives elect to be merged into the surviving cooperative;

(d) the terms and conditions of the merger and the mode of carrying the same into effect, including the manner and basis of converting the memberships in the merging cooperative or cooperatives into memberships in the surviving cooperative and the issuance of certificates of membership in respect of such converted memberships; and

(e) any provisions not inconsistent with this chapter deemed necessary or advisable for the conduct of the business and affairs of the surviving cooperative.

(2) The proposition for the merger of the merging cooperatives into the surviving cooperative and the proposed articles of merger approved by the

board of trustees of the respective cooperatives which are parties to such proposed merger shall then be submitted to a vote of the members of each such cooperative at any annual or special meeting thereof, the notice of which shall set forth full particulars concerning the proposed merger. The proposed merger and the proposed articles of merger shall be deemed to be approved upon the affirmative vote of not less than two-thirds of those members of each cooperative voting thereon at such meeting.

(3) Upon such approval by the members of the respective cooperatives parties to the proposed merger, articles of merger in the form approved shall be executed on behalf of each such cooperative by its president or vice-president and its seal shall be affixed thereto and attested by its secretary. The president or vice-president of each cooperative executing such articles of merger shall also make and annex thereto an affidavit stating that the provisions of this section were duly complied with by such cooperative.

(4) Such articles of merger and affidavits shall be submitted to the secretary of state for filing as provided in this chapter.

History: En. Sec. 14, Ch. 172, L. 1939; R.C.M. 1947, 14-514; amd. Sec. 44, Ch. 174, L. 1983.

Cross-References

Filings and fees, 35-18-501, 35-18-502.

35-18-402. Procedure for consolidation. Any two or more cooperatives, each of which is hereinafter designated a "consolidating cooperative", may consolidate into a new cooperative, hereinafter designated the "new cooperative" by complying with the following requirements:

(1) The proposition for the consolidation of the consolidating cooperatives into the new cooperative and proposed articles of consolidation to give effect thereto shall be first approved by the board of trustees of each consolidating cooperative. The proposed articles of consolidation shall recite in the caption that they are executed pursuant to this chapter and shall state:

(a) the name of each consolidating cooperative, the address of its principal office, and the date of the filing of its articles of incorporation in the office of the secretary of state;

(b) the name of the new cooperative and the address of its principal office;

(c) the names and addresses of the persons who shall constitute the first board of trustees of the new cooperative;

(d) the terms and conditions of the consolidation and the mode of carrying the same into effect, including the manner and basis of converting memberships in each consolidating cooperative into memberships in the new cooperative and the issuance of certificates of memberships in respect of such converted memberships; and

(e) any provisions not inconsistent with this chapter deemed necessary or advisable for the conduct of the business and affairs of the new cooperative.

(2) The proposition for the consolidation of the consolidating cooperatives into the new cooperative and the proposed articles of consolidation approved by the board of trustees of each consolidating cooperative shall then be submitted to a vote of the members thereof at any annual or special meeting thereof, the notice of which shall set forth full particulars concerning the proposed consolidation. The proposed consolidation and the proposed articles of consolidation shall be deemed to be approved upon the affirmative vote of

not less than two-thirds of those members of each consolidating cooperative voting thereon at such meeting.

(3) Upon such approval by the members of the respective consolidating cooperatives, articles of consolidation in the form approved shall be executed on behalf of each consolidating cooperative by its president or vice-president and its seal shall be affixed thereto and attested by its secretary. The president or vice-president of each consolidating cooperative executing such articles of consolidation shall also make and annex thereto an affidavit stating that the provisions of this section were duly complied with by such cooperative.

(4) Such articles of consolidation and affidavits shall be submitted to the secretary of state for filing as provided in this chapter.

History: **En. Sec. 13, Ch. 172, L. 1939; R.C.M. 1947, 14-513; amd. Sec. 45, Ch. 174, L. 1983.**

Cross-References

Filings and fees, 35-18-501, 35-18-502.

35-18-403. Effect of merger or consolidation. The effect of consolidation or merger shall be as follows:

(1) The several cooperatives parties to the consolidation or merger shall be a single cooperative which, in the case of a consolidation, shall be the new cooperative provided for in the articles of consolidation and, in the case of a merger, shall be that cooperative designated in the articles of merger as the surviving cooperative, and the separate existence of all cooperatives parties to the consolidation or merger, except the new or surviving cooperative, shall cease.

(2) Such new or surviving cooperative shall have all the rights, privileges, immunities, and powers and shall be subject to all the duties and liabilities of a cooperative organized under the provisions of this chapter and shall possess all the rights, privileges, immunities, and franchises, as well of a public as of a private nature, and all property, real and personal, applications for membership, all debts due on whatever account, and all other choses in action of each of the consolidating or merging cooperatives. Furthermore, all and every interest of or belonging or due to each of the cooperatives so consolidated or merged shall be taken and deemed to be transferred to and vested in such new or surviving cooperative without further act or deed, and the title to any real estate or any interest therein under the laws of this state vested in any such cooperative shall not revert or be in any way impaired by reason of such consolidation or merger.

(3) Such new or surviving cooperative shall thenceforth be responsible and liable for all of the liabilities and obligations of each of the cooperatives so consolidated or merged. Any claim existing or action or proceeding pending by or against any of such cooperatives may be prosecuted as if such consolidation or merger had not taken place, but such new or surviving cooperative may be substituted in its place.

(4) Neither the rights of creditors nor any liens upon the property of any of such cooperatives shall be impaired by such consolidation or merger.

(5) In the case of a consolidation, the articles of consolidation shall be deemed to be the articles of incorporation of the new cooperative. In the case of a merger, the articles of incorporation of the surviving cooperative shall be

deemed to be amended to the extent, if any, that changes therein are provided for in the articles of merger.

History: **En. Sec. 15, Ch. 172, L. 1939; R.C.M. 1947, 14-515.**

35-18-404. Dissolution of cooperative which has not commenced business. (1) A cooperative which has not commenced business may dissolve voluntarily by delivering to the secretary of state articles of dissolution, executed on behalf of the cooperative by a majority of the incorporators, which shall state:

(a) the name of the cooperative;

(b) the address of its principal office;

(c) the date of its incorporation;

(d) that the cooperative has not commenced business;

(e) that the amount, if any, actually paid in on account of membership fees, less any part thereof disbursed for necessary expenses, has been returned to those entitled thereto and that all easements shall have been released to the grantors;

(f) that no debt of the cooperative remains unpaid; and

(g) that a majority of the incorporators elect that the cooperative be dissolved.

(2) Such articles of dissolution shall be submitted to the secretary of state for filing as provided in this chapter.

History: **En. Sec. 18, Ch. 172, L. 1939; R.C.M. 1947, 14-518(a); amd. Sec. 46, Ch. 174, L. 1983.**

Cross-References

Dissolution and liquidation of business corporations, Title 35, ch. 1, part 9.

Dissolution and liquidation of nonprofit corporations, Title 35, ch. 2, part 7.

Involuntary corporate dissolution, Title 35, ch. 6.

Dissolution and winding up of partnerships in general, Title 35, ch. 10, part 6.

Dissolution of limited partnerships, Title 35, ch. 12, part 12.

Sale or disposition of assets of cooperative associations, 35-15-506.

Sale or disposition of assets of cooperative agricultural marketing associations, 35-17-506.

Filings and fees, 35-18-501, 35-18-502.

35-18-405. Dissolution and winding up of cooperative which has commenced business. A cooperative which has commenced business may dissolve voluntarily and wind up its affairs in the following manner:

(1) The board of trustees shall first recommend that the cooperative be dissolved voluntarily, and thereafter the proposition that the cooperative be dissolved shall be submitted to the members of the cooperative at any annual or special meeting, the notice of which shall set forth such proposition. The proposed voluntary dissolution shall be deemed to be approved upon the affirmative vote of not less than two-thirds of all of the members of the cooperative.

(2) Upon such approval, a certificate of election to dissolve, hereinafter designated the "certificate", shall be executed on behalf of the cooperative by its president or vice-president and its corporate seal shall be affixed thereto and attested by its secretary or assistant secretary. The certificate shall state the name of the cooperative, the address of its principal office, the names and addresses of its trustees, and the total number of members who voted for and against the voluntary dissolution of the cooperative. The president or vice-president executing the certificate shall also make and annex thereto an

affidavit stating that the provisions of this subsection were duly complied with. Such certificate and affidavit shall be submitted to the secretary of state for filing as provided in this chapter.

(3) Upon the filing of the certificate and affidavit by the secretary of state, the cooperative shall cease to carry on its business except insofar as may be necessary for the winding up thereof, but its corporate existence shall continue until articles of dissolution have been filed by the secretary of state.

(4) After the filing of the certificate and affidavit by the secretary of state, the board of trustees shall immediately cause notice of the winding up proceedings to be mailed to each known creditor and claimant and to be published once a week for 2 successive weeks in a newspaper of general circulation in the county in which the principal office of the cooperative is located.

(5) The board of trustees shall have full power to wind up and settle the affairs of the cooperative and shall proceed to collect the debts owing to the cooperative, convey and dispose of its property and assets, pay, satisfy, and discharge its debts, obligations, and liabilities, and do all other things required to liquidate its business and affairs and after paying or adequately providing for the payment of all its debts, obligations, and liabilities shall distribute the remainder of its property and assets among its members in proportion to the aggregate patronage of each such member during the 7 years next preceding the date of such filing of the certificate or, if the cooperative shall not have been in existence for such period, during the period of its existence.

(6) When all debts, liabilities, and obligations of the cooperative have been paid and discharged or adequate provision shall have been made therefor and all of the remaining property and assets of the cooperative shall have been distributed to the members pursuant to the provisions of this section, the board of trustees shall authorize the execution of articles of dissolution, which shall thereupon be executed on behalf of the cooperative by its president or vice-president and its corporate seal shall be affixed thereto and attested by its secretary. Such articles of dissolution shall recite in the caption that they are executed pursuant to this chapter and shall state:

(a) the name of the cooperative;

(b) the address of the principal office of the cooperative;

(c) that the cooperative has heretofore delivered to the secretary of state a certificate of election to dissolve and the date on which the certificate was filed by the secretary of state in the records of his office;

(d) that all debts, obligations, and liabilities of the cooperative have been paid and discharged or that adequate provision has been made therefor;

(e) that all the remaining property and assets of the cooperative have been distributed among the members in accordance with the provisions of this section; and

(f) that there are no actions or suits pending against the cooperative. The president or vice-president executing the articles of dissolution shall also make and annex thereto an affidavit stating that the provisions of this subsection were duly complied with. Such articles of dissolution and affidavit, accompanied by proof of the publication required in this subsection, shall be submitted to the secretary of state for filing as provided in this chapter.

History: En. Sec. 18, Ch. 172, L. 1939; R.C.M. 1947, 14-518(b); amd. Sec. 47, Ch. 174, L. 1983; amd. Sec. 2, Ch. 289, L. 1987.

Cross-References

Dissolution and liquidation of business corporations, Title 35, ch. 1, part 9.

Dissolution and liquidation of nonprofit corporations, Title 35, ch. 2, part 7.

Involuntary corporate dissolution, Title 35, ch. 6.

Dissolution and winding up of partnerships in general, Title 35, ch. 10, part 6.

Dissolution of limited partnerships, Title 35, ch. 12, part 12.

Sale or disposition of assets of cooperative associations, 35-15-506.

Sale or disposition of assets of cooperative agricultural marketing associations, 35-17-506.

Filings and fees, 35-18-501, 35-18-502.

Part 5

Filings and Fees

35-18-501. Filings relative to incorporation, amendment, conversion, merger, consolidation, and dissolution — effect of filing — transmittal to county clerk. (1) Articles of incorporation, amendment, consolidation, merger, conversion, dissolution, as the case may be, when executed and accompanied by such affidavits as may be required by applicable provisions of this chapter, shall be presented to the secretary of state for filing in the records of his office. If the secretary of state shall find that the articles presented conform to the requirements of this chapter, he shall upon the payment of the fees as in this chapter provided file the articles so presented in the records of his office, and upon such filing, the incorporation, amendment, consolidation, merger, conversion, or dissolution provided for therein shall be in effect.

(2) The secretary of state, immediately upon the filing in his office of any articles pursuant to this chapter, shall transmit a certified copy thereof to the county clerk of the county in which the principal office of each cooperative or corporation affected by such incorporation, amendment, consolidation, merger, conversion, or dissolution shall be located. The clerk of any county, upon receipt of any such certified copy, shall file and index the same in the records of his office, but the failure of the secretary of state or of a clerk of a county to comply with the provisions of this section shall not invalidate such articles.

(3) The provisions of this section shall also apply to certificates of election to dissolve and affidavits of compliance executed pursuant to 35-18-405(2).

History: En. Sec. 19, Ch. 172, L. 1939; R.C.M. 1947, 14-519; amd. Sec. 48, Ch. 174, L. 1983.

Cross-References

Amendments of articles of incorporation of cooperative associations, 35-15-205.

Amendments of articles of incorporation of cooperative agricultural marketing associations, 35-17-203.

Amendments of articles of incorporation of rural cooperative utilities, 35-18-204.

35-18-502. Fees to be charged by secretary of state. The secretary of state shall charge and collect for:

(1) filing articles of incorporation and issuing a certificate of incorporation, $40;

(2) filing articles of amendment and issuing a certificate of amendment, $10;

(3) filing articles of consolidation or merger and issuing a certificate of consolidation or merger, $10;

(4) filing articles of conversion and issuing a certificate of conversion, $10;

(5) filing certificate of election to dissolve and issuing certificate of election to dissolve, $10;

(6) filing articles of dissolution and issuing certificate of dissolution, $10; and

(7) filing certificate of change of principal office and issuing certificate of change of office, $10.

History: En. Sec. 27, Ch. 172, L. 1939; amd. Sec. 5, Ch. 117, L. 1961; R.C.M. 1947, 14-527.

35-18-503. Exemption from taxes. Cooperatives and foreign corporations transacting business in this state pursuant to the provisions of this chapter, except as provided in 10-4-201 and 15-53-138, are exempt from all excise and income taxes.

History: En. Sec. 28, Ch. 172, L. 1939; amd. Sec. 8, Ch. 80, L. 1957; R.C.M. 1947, 14-528; amd. Sec. 19, Ch. 635, L. 1985; amd. Sec. 7, Ch. 676, L. 1991; amd. Sec. 2, Ch. 65, L. 1997; amd. Sec. 38, Ch. 426, L. 1999.

Compiler's Comments

1999 Amendment: Chapter 426 inserted reference to 15-53-138. Amendment effective January 1, 2000.

Applicability: Section 43, Ch. 426, L. 1999, provided: "[This act] applies to tax years beginning after December 31, 1999."

Cross-References

Tax-exempt property, Title 15, ch. 6, part 2.

Exempt securities, 30-10-104.

35-18-504. Repealed. Sec. 3, Ch. 65, L. 1997.

History: En. Sec. 11, Ch. 676, L. 1991.

35-18-505. Repealed. Sec. 3, Ch. 65, L. 1997.

History: En. Sec. 16, Ch. 676, L. 1991.

35-18-506. Repealed. Sec. 3, Ch. 65, L. 1997.

History: En. Sec. 17, Ch. 676, L. 1991.

35-18-507 through 35-18-509 reserved.

35-18-510. Repealed. Sec. 3, Ch. 65, L. 1997.

History: En. Sec. 15, Ch. 676, L. 1991.

CHAPTER 19

ELECTRICITY BUYING COOPERATIVE ACT

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Part 1
General Provisions

Part Compiler's Comments

Effective Date: Section 37, Ch. 575, L. 1999, provided: "[This act] is effective on passage and approval." Approved May 5, 1999.

35-19-101. Short title. This chapter may be cited as the "Electricity Buying Cooperative Act".

History: En. Sec. 1, Ch. 575, L. 1999.

35-19-102. Definitions. As used in this chapter, unless the context requires otherwise, the following definitions apply:

(1) "Distribution utility" means the electricity distribution portion of a public utility as defined in 69-8-103.

(2) "Residential customer" means a residential customer of a distribution utility.

(3) "Small commercial customer" means, for a distribution utility, individual accounts of a commercial customer with an average monthly demand in the previous calendar year of less than 100 kilowatts or a new commercial customer with an estimated average monthly demand of less than 100 kilowatts.

(4) "Small customer" means a residential customer or small commercial customer of a distribution utility.

History: En. Sec. 2, Ch. 575, L. 1999.

35-19-103. Jurisdiction of public service commission. The public service commission has jurisdiction to choose and regulate a buying cooperative that obtains a default supplier license, as provided in 69-8-403. If a buying cooperative that has obtained a default supplier license has the opportunity to obtain federal power marketing administration power, the public service commission also has jurisdiction over the purchase and distribution of that power, as provided in 69-8-403.

History: **En. Sec. 3, Ch. 575, L. 1999.**

35-19-104. Permissible purpose of incorporation. A buying cooperative may be organized under this chapter only for the purpose of supplying electricity to small customers as a default supplier, pursuant to 69-8-403.

History: **En. Sec. 4, Ch. 575, L. 1999.**

35-19-105. Name. (1) The name of each buying cooperative must include the phrase "electricity buying cooperative" and the abbreviation "inc."

(2) The name of a buying cooperative must distinguish it from the name of another corporation organized under the laws authorized to transact business in this state.

(3) The phrase "electricity buying cooperative" may not be used in the name of any corporation organized under the laws of or authorized to transact business in this state, except a buying cooperative transacting business in this state pursuant to this chapter.

History: **En. Sec. 8, Ch. 575, L. 1999.**

35-19-106. Incorporators. Five or more individuals may organize a buying cooperative, as provided in this chapter.

History: **En. Sec. 9, Ch. 575, L. 1999.**

35-19-107. Membership. (1) Membership in a buying cooperative is restricted to small customers of a distribution utility.

(2) A member may join a buying cooperative by the methods prescribed in the buying cooperative's bylaws or may be assigned to a buying cooperative by the public service commission, as provided by commission rule.

History: **En. Sec. 14, Ch. 575, L. 1999.**

35-19-108. Exemption from taxes. Buying cooperatives transacting business in this state pursuant to this chapter are exempt from all excise and income taxes, other than any applicable fees to fund the Montana consumer counsel and the public service commission as provided in Title 69, chapter 1, parts 2 and 4.

History: **En. Sec. 28, Ch. 575, L. 1999.**

Part 2

Powers and Restrictions — Buying Cooperatives

35-19-201. Powers of buying cooperative. A buying cooperative may:

(1) sue and be sued in its corporate name;

(2) have existence for as long as it serves its purpose;

(3) adopt a corporate seal and alter the seal at pleasure;

(4) own, possess, and enjoy as much real and personal property as is necessary for the transaction of its business and sell and dispose of the property;

(5) borrow money, or otherwise contract indebtedness, and pledge its property, both real and personal, to secure the payment of the borrowed money or contract for debt;

(6) enter into contracts and other obligations for the purchase and sale of electricity to its members;

(7) sell or otherwise dispose of electricity on the wholesale market not consumed by its members;

(8) conduct its business and exercise all of its powers within or outside of this state;

(9) adopt, amend, and repeal bylaws; and

(10) except as prohibited in 35-19-202, do and perform all other acts and things and have and exercise all other powers that may be necessary, convenient, or appropriate to accomplish the purpose for which the buying cooperative is organized.

History: En. Sec. 5, Ch. 575, L. 1999.

35-19-202. Restrictions on powers of buying cooperative. Notwithstanding any other provision of this chapter, a buying cooperative may not:

(1) construct, purchase, take, receive, or otherwise acquire or own, hold, equip, maintain, or operate electric generating plants or transmission or distribution lines or systems, except that a buying cooperative may enter into transmission or distribution agreements for the lease or use of capacity on transmission and distribution systems;

(2) purchase electricity for or sell electricity to commercial or industrial electric consumers having individual accounts with an average monthly demand in the previous calendar year of 100 kilowatts or more or a new commercial or industrial customer with an estimated average monthly demand of 100 kilowatts or more; or

(3) offer for sale any products other than electricity supply.

History: En. Sec. 6, Ch. 575, L. 1999.

35-19-203. Waiver of notice. (1) If this chapter or the buying cooperative's articles of incorporation or bylaws require that notice be given, a person may waive the notice if the waiver is in writing and signed by the person entitled to the notice whether before or after the time fixed for the giving of the notice.

(2) If a person entitled to notice of a meeting attends the meeting, the person's attendance constitutes a waiver of notice of the meeting, except in the case when the person attends the meeting for the express purpose of objecting to the transaction of any business because the meeting was not lawfully called or convened.

History: En. Sec. 7, Ch. 575, L. 1999.

35-19-204. Nonliability of members, trustees, and officers. (1) The private property of the members of a buying cooperative is exempt from execution for the debts of the buying cooperative, and a member may not be liable or responsible for any debts of the buying cooperative.

(2) A trustee or officer of a buying cooperative or acting for a buying cooperative is not personally liable to the buying cooperative or its members for any actions taken or any failure to take any action as a trustee or officer unless:

(a) the trustee or officer fails to perform the trustee's or officer's responsibilities or duties, including those in compliance with 35-19-307 and 35-19-308; and

(b) the failure to perform constitutes willful misconduct or recklessness.

History: En. Sec. 15, Ch. 575, L. 1999.

35-19-205. Authority to take acknowledgments. A person who is authorized to take acknowledgments under the laws of this state may not be disqualified from taking acknowledgments of instruments executed in favor of a buying cooperative or to which it is a party by reason of being an officer, trustee, director, or member of the buying cooperative.

History: En. Sec. 22, Ch. 575, L. 1999.

Part 3

Incorporation and Dissolution

35-19-301. Articles of incorporation. (1) The articles of incorporation of a buying cooperative must state in the caption that the articles of incorporation are executed pursuant to this chapter, must be signed by each of the incorporators, and must state:

(a) the name of the cooperative;

(b) the address of its principal office;

(c) the names and addresses of the incorporators;

(d) the names and addresses of the persons who constitute its first board of trustees; and

(e) any provisions not inconsistent with this chapter considered necessary or advisable for the conduct of its business and affairs.

(2) In addition to provisions required in subsection (1), the articles of incorporation may also contain:

(a) provisions, not inconsistent with law, eliminating or limiting liability as provided in this chapter;

(b) provisions for classifications of members in a buying cooperative; and

(c) provisions for issuance of nonvoting stock.

(3) A buying cooperative's articles of incorporation must be submitted to the secretary of state for filing, as provided in 35-19-315.

(4) It is not necessary to include in the articles of incorporation of a buying cooperative the purpose for which it is organized or any of the corporate powers vested in a buying cooperative under this chapter.

History: En. Sec. 10, Ch. 575, L. 1999.

35-19-302. Amendment of articles of incorporation. A buying cooperative may amend its articles of incorporation by complying with the following requirements:

(1) The proposed amendment must first be:

(a) approved by the board of trustees and then be submitted to a vote of the members at any annual or special meeting of the membership; or

(b) submitted by a petition bearing not less than 20% of the members' signatures, in accordance with the same procedures as those provided for member initiatives provided in 35-19-306.

(2) The notice of the meeting on the proposed amendment must be included in the proposed amendment. The proposed amendment, with the changes that the members choose to make to the amendment, is considered to be approved on the affirmative vote of not less than two-thirds of those members voting on the amendment at the meeting.

(3) Upon an approval of the amendment by the members, the articles of amendment must be executed on behalf of the buying cooperative by its

president or vice president and its corporate seal must be affixed to the articles of amendment and attested by its secretary. The articles of amendment must include in the caption that the articles of amendment are executed pursuant to this chapter and must state:

(a) the name of the buying cooperative;

(b) the address of its principal office;

(c) the date of the filing of its articles of incorporation in the office of the secretary of state; and

(d) the amendment to its articles of incorporation.

(4) The president or vice president executing the articles of amendment shall also make and attach to the articles of amendment an affidavit stating that the provisions of this section were met.

(5) The articles of amendment and the affidavit must be submitted to the secretary of state for filing, as provided in 35-19-315.

History: En. Sec. 11, Ch. 575, L. 1999.

35-19-303. Change of principal office without amendment. A buying cooperative may, without amending its articles of incorporation, upon authorization of its board of trustees, change the location of its principal office. The buying cooperative shall file a certificate of change of principal office executed by its president or vice president, under its seal attested by its secretary, with the secretary of state's office. The buying cooperative shall also file a certificate of change of principal office in each county office in which the buying cooperative's articles of incorporation or any prior certificate of change of principal office of the buying cooperative has been filed. The buying cooperative shall pay the change in location of principal office fee prescribed in 35-19-315. The buying cooperative shall also, within 30 days after the filing of the certificate of change of principal office in any county office, file certified copies of its articles of incorporation and all article of incorporation amendments if not already on file in the county office.

History: En. Sec. 12, Ch. 575, L. 1999.

35-19-304. Bylaws. The original bylaws of a buying cooperative must be adopted by its board of trustees. After adoption by the board of trustees, the bylaws may be adopted, amended, or repealed by its members or, except as authorized in a bylaw, by its board of trustees. A bylaw may not prevent the members from reassuring sole power to amend bylaws or prevent members from otherwise adopting, amending, or repealing bylaws. The bylaws must include the rights and duties of members and trustees and may contain other provisions for the regulation and management of the affairs of the cooperative not inconsistent with this chapter or with the articles of incorporation.

History: En. Sec. 13, Ch. 575, L. 1999.

35-19-305. Meetings of members. (1) An annual meeting of the members must be held at a time that must be provided in the bylaws.

(2) Special meetings of the members may be called by the board of trustees, by any three trustees, by not less than 20% of the members, or by the president.

(3) Meetings of members must be held at a place designated in the bylaws. In the absence of a provision in the bylaws that designates a meeting place, all meetings must be held at a place determined by the board of trustees.

(4) Except as otherwise provided, written or printed notice stating the time and place of each meeting of members and, in the case of a special meeting, the purpose or purposes for which the meeting is called must be given to each member, either personally or by mail, not less than 10 or more than 25 days before the date of the meeting.

(5) Five percent of all members present in person or 50 members present in person, whichever is fewer, constitute a quorum for the transaction of business at all meetings of the members, but the bylaws may prescribe the presence of a greater percentage or number of the members for a quorum. If less than a quorum is present at a meeting, a majority of those present in person may adjourn the meeting from time to time without further notice.

(6) Each member is entitled to one vote on each matter submitted to a vote at a meeting. Voting must be in person but, if the bylaws allow, voting may also be by proxy or by mail, or both, or if the bylaws allow, by the method provided in 35-19-309. If the bylaws provide for voting by proxy or by mail, the bylaws must also prescribe the conditions under which proxy or mail voting or both are to be exercised. In any event, a person may not vote as a proxy for more than three members at a meeting of the members.

History: En. Sec. 16, Ch. 575, L. 1999.

35-19-306. Initiative by members — approval of trustees not required. (1) Notwithstanding any other provision of this chapter, there must be submitted to the members of a buying cooperative any proposition embodied in a petition signed by not less than 20% of its members, together with any document submitted with the petition to give the effect to the proposition, either at a special meeting of the members held within 45 days after the presentation of the petition or, if the date of the next annual meeting of members falls within 90 days after the presentation or if the petition specifically requests, at the annual meeting.

(2) The approval of the board of trustees is not required for any proposition or document submitted to the members pursuant to this section and approved by them, but any proposition or document is subject to all other applicable provisions of this chapter. The affidavit or affidavits required to be filed with this proposition or document pursuant to applicable provisions of this chapter must be modified to be in compliance with the provisions of this section.

History: En. Sec. 17, Ch. 575, L. 1999.

35-19-307. Board of trustees — number — qualifications — removal — compensation — joint memberships. (1) The business and affairs of a buying cooperative must be managed by or under the direction of a board of not less than five trustees, each of whom must be a member of the buying cooperative. The bylaws must prescribe the number of trustees and their qualifications, other than those provided for in this chapter, and the manner of holding meetings of the board of trustees and of the election of successors to trustees who resign, die, or are otherwise incapable of acting. The bylaws may also provide for the removal of trustees from office and for the election of their successors.

(2) Without approval of the membership, trustees:

(a) may not receive any salaries for their services as trustees, except trustees may receive the same insurance coverage provided to buying cooperative employees; and

(b) except in emergencies, may not be employed by the buying cooperative in a capacity involving compensation.

(3) The bylaws may provide that the board of trustees may establish a fixed sum, including expenses of attendance, if any, to be allowed for:

(a) attendance at each meeting of the board of trustees or any committee of the board of trustees; or

(b) representing the buying cooperative at a meeting or on business whenever representation has been approved by the board.

(4) If two or more persons hold a joint membership in a buying cooperative, one person, but not more than one person, from a joint membership may be elected a trustee.

(5) The policies of the buying cooperative may provide that benefits provided to employees may be extended to trustees.

History: En. Sec. 18, Ch. 575, L. 1999.

35-19-308. Trustees — term — quorum — powers. (1) The trustees of a buying cooperative named in articles of incorporation shall hold office until the next following annual meeting of the members or until their successors have been elected and qualified. At each annual meeting or, in case of failure to hold the annual meeting as specified in the bylaws, at a special meeting called for that purpose, the members shall elect trustees who may serve for 1-, 2-, or 3-year terms. Each trustee shall hold office for the term for which that trustee is elected or until the trustee's successor has been elected and qualified.

(2) A majority of the board of trustees constitutes a quorum.

(3) The board of trustees may exercise all of the powers of a buying cooperative, except those powers that are conferred upon the members by this chapter or by its articles of incorporation or bylaws.

History: En. Sec. 19, Ch. 575, L. 1999.

35-19-309. Voting districts. (1) Notwithstanding any other provisions of this chapter, the bylaws may provide that the territory or geographic area in which a buying cooperative operates to serve its members, or a class or classes of members, must be divided into two or more voting districts and that in respect to each voting district:

(a) the members or the members of a membership class or classes residing in the voting district shall elect a designated number of trustees;

(b) the members or the members of a membership class or classes residing in the voting district shall elect a designated number of delegates; or

(c) the members or the members of a membership class or classes shall elect both trustees and delegates.

(2) This section does not restrict or prohibit a buying cooperative from using a combination of voting districts based on members or classes of members with a territory or geographical area or voting districts at large based on members or classes of members using one or more kinds of services or products provided by the buying cooperative.

(3) The bylaws must prescribe the manner in which the voting districts and the members or membership classes of those voting districts and the delegates and trustees, if any, elected from those voting districts shall function and the powers of the delegates, which may include the power to elect trustees and adopt, amend, or repeal the bylaws of a buying cooperative as provided in this chapter.

(4) A member at a voting district meeting and a delegate at a meeting may not vote by proxy or by mail.

History: En. Sec. 20, Ch. 575, L. 1999.

35-19-310. Officers. The officers of a buying cooperative consist of a president, vice president, secretary, and treasurer who are elected annually by and from the board of trustees. A person may not continue to hold any of the above offices after that person has ceased to be a trustee. The offices of secretary and of treasurer may be held by the same person. The board of trustees may also elect or appoint other buying cooperative officers, agents, or employees that it considers necessary or advisable and shall prescribe the powers and duties of those other officers, agents, or employees. An officer may be removed from office and a successor elected in the manner prescribed in the bylaws.

History: En. Sec. 21, Ch. 575, L. 1999.

35-19-311. Refunds to members — retention of unclaimed refunds. (1) Revenue of a buying cooperative for any fiscal year must, unless otherwise determined by a vote of the members, be distributed by the buying cooperative to its members as patronage refunds, prorated in accordance with the patronage of the buying cooperative by the respective members paid for during the fiscal year, whenever the revenue exceeds the amount necessary to:

(a) defray expenses of the buying cooperative and of the operation and maintenance of its facilities during the fiscal year;

(b) pay interest and principal obligations of the buying cooperative coming due in the fiscal year;

(c) finance or provide a reserve for the financing of the construction or acquisition by the buying cooperative of additional facilities to the extent determined by the board of trustees;

(d) provide a reasonable reserve for working capital; and

(e) provide a reserve for the payment of indebtedness of the buying cooperative maturing more than 1 year after the date of the incurrence of the indebtedness in an amount not less than the total of the interest and principal payments required to be made during the next fiscal year.

(2) This section may not be construed to prohibit the payment by a buying cooperative of all or any part of its indebtedness prior to the date when the payment becomes due.

(3) A buying cooperative shall, upon the action of the board of trustees, retain redeemed patronage refunds that are allocated to its members and that remain unclaimed for a period of 5 years after the end of the year in which the refunds are given. Unclaimed redeemed patronage refunds retained by the buying cooperative must be used for educational purposes.

History: En. Sec. 23, Ch. 575, L. 1999.

35-19-312. Disposition or encumbrance of property. (1) Except as provided in subsection (2), or other than as arises relating to the issuance of stock or for any sale, mortgage, lease, transfer, or other disposition or encumbrance of property to any entity owned or controlled by the buying cooperative or in which the buying cooperative holds a majority interest or for any disposition or encumbrance arising from or in connection with the issuance of shares of stock, if any is authorized, a buying cooperative may not sell, mortgage, lease, or otherwise dispose of or encumber all or any substantial portion of its property unless the sale, mortgage, lease, or other disposition or encumbrance is authorized at a duly held meeting of members of the buying cooperative by an affirmative vote of not less than two-thirds of all the members of the buying cooperative and unless the notice of the proposed sale, mortgage, lease, or other disposition or encumbrance is contained in the notice of the meeting.

(2) The board of trustees of a buying cooperative, without authorization by the members of the buying cooperative, has the full power and authority to authorize the execution and delivery of a mortgage or mortgages or a deed or deeds of trust upon or the pledging or encumbrancing of any or all of the property, assets, rights, privileges, licenses, franchises, and permits of the buying cooperative, whether acquired or to be acquired and wherever situated, as well as the revenue and income from the property, assets, rights, privileges, licenses, franchises, and permits of the buying cooperative, all upon the terms and conditions that the board of trustees determines, to secure any indebtedness of the buying cooperative or any entity owned or controlled by the buying cooperative or in which the buying cooperative owns a majority interest to the United States or any instrumentality or agency of the United States or to any other financing sources within the United States.

(3) Before a meeting is held to vote on authorization of disposition of buying cooperative property as provided in subsection (1), the board of trustees shall:

(a) have the property appraised by three appraisers chosen by the board and not associated with the buying cooperative or a proposed buyer of buying cooperative property;

(b) notify all buying cooperative members, at least 90 days in advance, of a meeting to vote on disposition of buying cooperative property. Detailed proposals for disposition of the property must accompany the notice; and

(c) at least 30 days before the meeting, mail to all members any alternative proposal made by buying cooperative members if it has been submitted to the board and signed by 50 or more members.

(4) The vote on property disposition may take place at an annual meeting if the board notifies the members as provided in this section.

History: En. Sec. 24, Ch. 575, L. 1999.

35-19-313. Dissolution of buying cooperative that has not commenced business. (1) A buying cooperative that has not commenced business may dissolve voluntarily by delivering to the secretary of state articles of dissolution, executed on behalf of the buying cooperative by a majority of the incorporators. The articles of dissolution must state:

(a) the name of the buying cooperative;

(b) the address of its principal office;

(c) the date of its incorporation;

(d) that the buying cooperative has not commenced business;

(e) that the amount, if any, actually paid in on account of membership fees, less any part of the amount disbursed for necessary expenses, has been returned to those entitled to money;

(f) that there are not any unpaid buying cooperative debts; and

(g) that a majority of the incorporators elect that the buying cooperative be dissolved.

(2) The articles of dissolution must be submitted to the secretary of state for filing, as provided in this chapter.

History: En. Sec. 25, Ch. 575, L. 1999.

35-19-314. Dissolution and winding up of buying cooperative that has commenced business. A buying cooperative that has commenced business may dissolve voluntarily and wind up its affairs in the following manner:

(1) The board of trustees shall first recommend that the buying cooperative be dissolved voluntarily, and after that, the proposition that the buying cooperative be dissolved must be submitted to the members of the buying cooperative at any annual or special meeting. The notice of the annual or special meeting must include the proposition. The proposed voluntary dissolution is considered approved upon the affirmative vote of not less than two-thirds of all of the members of the buying cooperative.

(2) Upon approval of the voluntary dissolution, a certificate of election to dissolve is executed on behalf of the buying cooperative by its president or vice president and its corporate seal must be affixed to the certificate and attested by its secretary or assistant secretary. The certificate must state the:

(a) name of the buying cooperative;

(b) address of its principal office;

(c) names and addresses of its trustees; and

(d) total number of members who voted for and against the voluntary dissolution of the buying cooperative. The president or vice president executing the certificate shall also make and annex to the certificate an affidavit stating that the provisions of this subsection were complied with. The certificate and affidavit must be submitted to the secretary of state for filing as provided in this chapter.

(3) Upon the filing of the certificate provided for in subsection (2) and an affidavit with the secretary of state, the buying cooperative shall cease to carry on its business except to the extent necessary for winding up the business of the buying cooperative, but its corporate existence must continue until articles of dissolution have been filed by the secretary of state.

(4) After the filing of the certificate and affidavit with the secretary of state, the board of trustees shall immediately mail a notice of the winding up proceedings to each known creditor and claimant and publish the notice once a week for 2 successive weeks in a newspaper of general circulation in the county in which the principal office of the buying cooperative is located.

(5) The board of trustees has the full power to wind up and settle the affairs of the buying cooperative and shall proceed to collect the debts owing to the buying cooperative, convey and dispose of its property and assets, pay, satisfy, and discharge its debts, obligations, and liabilities, and do all other things required to liquidate its business and affairs, and after paying or adequately providing for the payment of all its debts, obligations, and liabilities, the board of trustees shall distribute the remainder of its property and assets among its members in proportion to the aggregate patronage of each buying cooperative member:

(a) during the period preceding the date of the filing of the certificate that encompasses the longest period of time in effect prior to the buying cooperative dissolution for determination of members who are entitled to the patronage refunds for the capital redemption period; or

(b) if the buying cooperative was not in existence for the period provided for in subsection (5)(a), then during the period of its existence.

(6) When all debts, obligations, and liabilities of the buying cooperative have been paid and discharged or adequate provision has been made in return for all debts, obligations, and liabilities and all of the remaining property and assets of the buying cooperative are distributed to the members pursuant to the provisions of this section, the board of trustees shall authorize the execution of articles of dissolution that must be executed on behalf of the buying cooperative by its president or vice president and its corporate seal must be affixed to the articles of dissolution and attested by its secretary. The articles of dissolution must include in the caption that the articles of dissolution are executed pursuant to this chapter and must state:

(a) the name of the buying cooperative;

(b) the address of the principal office of the buying cooperative;

(c) that the buying cooperative has up to this time filed with the secretary of state a certificate of election to dissolve and the date on which the certificate was filed;

(d) that all debts, obligations, and liabilities of the buying cooperative have been paid and discharged or that adequate provision has been made in return for all debts, obligations, and liabilities;

(e) that all the remaining property and assets of the buying cooperative have been distributed among the members in accordance with the provisions of this section; and

(f) that there are not any actions or suits pending against the buying cooperative. The president or vice president executing the articles of dissolution shall also make and annex to the articles of dissolution an affidavit stating that the provisions of this subsection (6) were met. The articles of dissolution and affidavit, accompanied by proof of the publication required in this subsection, must be submitted to the secretary of state for filing as provided in this chapter.

History: **En. Sec. 26, Ch. 575, L. 1999.**

35-19-315. Incorporation, amendment, and dissolution filings. (1) Articles of incorporation, amendment, or dissolution, when executed and accompanied by an affidavit that may be required by applicable provisions of this chapter, must be presented to the secretary of state for filing. If the secretary of state finds that the articles presented conform to the requirements of this chapter, the secretary of state shall upon the payment of the fees provided for in 35-18-502, file the articles, and upon the filing, the incorporation, amendment, or dissolution is legally effective.

(2) The secretary of state, immediately upon the filing of any articles pursuant to this chapter, shall transmit a certified copy of the filing to the county clerk of the county in which the principal office of each buying cooperative or corporation affected by the incorporation, amendment, or dissolution is located. The clerk of any county, upon receipt of the certified copy, shall file and index the certified copy in the records of the clerk's office. Failure

of the secretary of state or of a clerk of a county to comply with the provisions of this section does not invalidate the articles.

(3) The provisions of this section also apply to certificates of election to dissolve and affidavits of compliance executed pursuant to 35-19-314.

History: En. Sec. 27, Ch. 575, L. 1999.

CHAPTER 20

CEMETERY ASSOCIATIONS

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35-20-315. Annual report of trustees of fund.

Chapter Cross-References

Morticians and funeral directors, Title 37, ch. 19.

Health and safety — death, Title 50, ch. 15, part 4.

Estates, Trusts, and Fiduciary Relationships, Title 72.

Part 1
Formation

Part Cross-References

Formation, articles of incorporation, and bylaws of business corporations, Title 35, ch. 1, part 2.

Formation, articles of incorporation, and bylaws of nonprofit corporations, Title 35, ch. 2, part 2.

Formation of religious corporations sole, Title 35, ch. 3, part 2.

35-20-101. Permissible purposes for association — first meeting — election of trustees. Any number of persons residing in any county in the state of Montana, not less than seven, who desire to form an association for the purpose of procuring and holding lands to be used exclusively for a cemetery or place of burial of the dead, may meet at such time and place as they or a majority of them agree upon and appoint a chairman and secretary by a vote of the majority of the persons present at the meeting and may proceed to form an association by agreeing upon a corporate name by which the association shall be known and by determining upon the number of trustees to manage the affairs of the association, which number shall not be less than three or more than nine. Thereupon they may proceed to elect by ballot the number of trustees so determined upon.

History: En. Sec. 1, Ch. 18, L. 1905; re-en. Sec. 4237, Rev. C. 1907; re-en. Sec. 6469, R.C.M. 1921; Cal. Civ. C. Secs. 608-616; re-en. Sec. 6469, R.C.M. 1935; R.C.M. 1947, 9-101.

35-20-102. Classification of trustees — staggered terms. The chairman and secretary of such meeting shall immediately after such election divide the trustees by lot into three classes, those in the first class to hold their office for 1 year; those in the second class, 2 years; and those in the third class, 3 years; but the trustees of each class may be reelected if they possess the qualifications hereinafter mentioned. Such meeting shall also determine on what day in each year the future annual election of trustees shall be held.

History: En. Sec. 2, Ch. 18, L. 1905; re-en. Sec. 4238, Rev. C. 1907; re-en. Sec. 6470, R.C.M. 1921; re-en. Sec. 6470, R.C.M. 1935; R.C.M. 1947, 9-102.

35-20-103. Document of incorporation — contents — filing. (1) The chairman and secretary of such meeting shall within 5 days after the holding of the same make a written certificate, which shall state:

(a) the names of the associates who attended such meeting;

(b) the corporate name of the association determined upon by a majority of the persons who met;

(c) the number of persons fixed upon to manage the concerns of the association;

(d) the names of the trustees chosen at the meeting and their classification;

(e) the day of the year fixed upon for the annual election of trustees and the manner of their election.

(2) In addition to provisions required in subsection (1), the document of incorporation may also contain provisions not inconsistent with law regarding liability as set forth in 35-1-216(2)(d).

(3) Such certificate shall be signed by the chairman and secretary and acknowledged by them before some person authorized to take acknowledgments within the state of Montana. They shall cause such certificate so acknowledged to be recorded in the office of the county clerk and recorder of the county in which said meeting was held, and a certified copy of such certificate so recorded shall be filed with the secretary of state of the state of Montana, who shall thereupon issue his certificate therefor without charge.

History: En. Sec. 3, Ch. 18, L. 1905; re-en. Sec. 4239, Rev. C. 1907; re-en. Sec. 6471, R.C.M. 1921; re-en. Sec. 6471, R.C.M. 1935; R.C.M. 1947; 9-103; amd. Sec. 7, Ch. 559, L. 1987; amd. Sec. 212, Ch. 368, L. 1991.

35-20-104. Effect of filing — powers of association — eminent domain. Whenever such certificate is duly acknowledged and recorded and filed as provided in the last section, the association mentioned therein shall be deemed legally incorporated and shall have the general powers and privileges of corporations with the right to sue and be sued and to continue perpetually and in addition thereto such corporations shall have the right and power to take private property for public use to be used exclusively for a cemetery or place of burial of the dead. Such power of eminent domain to be exercised under the provisions of Title 70, chapter 30.

History: En. Sec. 4, Ch. 18, L. 1905; re-en. Sec. 4240, Rev. C. 1907; amd. Sec. 1, Ch. 99, L. 1911; re-en. Sec. 6472, R.C.M. 1921; re-en. Sec. 6472, R.C.M. 1935; R.C.M. 1947, 9-104.

Part 2

Operations Generally — Trustees of Association

Part Cross-References

Directors and officers of business corporations, Title 35, ch. 1, part 4.

Directors and officers of nonprofit corporations, Title 35, ch. 2, part 4.

Shareholders, directors, and officers of cooperative associations, Title 35, ch. 15, part 3.

35-20-201. Local government approval prior to commencing operations. Before commencing operations under this chapter, an association shall comply with the planning and zoning requirements of the city or county or the city and county jointly, as may be required by law, and shall demonstrate to such unit or units of local government that a need exists for the proposed cemetery and that the association has the financial capability required to operate a cemetery in a satisfactory manner.

History: En. 9-111.1 by Sec. 2, Ch. 98, L. 1974; R.C.M. 1947, 9-111.1.

Cross-References

Local government involvement — cemeteries, Title 7, ch. 35, part 1.

35-20-202. Bylaws. The trustees of any association incorporated agreeably to the provisions of this chapter may enact bylaws for regulating the affairs of such corporation, not inconsistent with the laws of this state.

History: En. Sec. 5, Ch. 18, L. 1905; re-en. Sec. 4241, Rev. C. 1907; re-en. Sec. 6473, R.C.M. 1921; re-en. Sec. 6473, R.C.M. 1935; R.C.M. 1947, 9-105.

35-20-203. Vacancies in membership. All vacancies occurring by death or otherwise in the membership of any cemetery association organized under this chapter shall be filled by a vote of the surviving or remaining associates named in the certificate of association. All persons so elected to fill any such vacancy shall be entitled to vote at the election of trustees and be eligible to the office of trustee of said incorporation and shall have and be entitled to the same rights, powers, and privileges as the original associates named in said certificate.

History: En. Sec. 6, Ch. 18, L. 1905; re-en. Sec. 4242, Rev. C. 1907; re-en. Sec. 6474, R.C.M. 1921; re-en. Sec. 6474, R.C.M. 1935; R.C.M. 1947, 9-106.

35-20-204. Annual election — time — voting. (1) The annual election for trustees to supply the place of those whose term of office expires shall be held on the day mentioned in the certificate of incorporation and at such hour and place as the trustees direct. The trustees chosen at any election after the first shall hold their offices for 3 years and until others are chosen to succeed them.

(2) Such election shall be by ballot, and every person who is the proprietor of a lot in the cemetery of the association or, if there is more than one proprietor of any such lot, then such one of the proprietors as a majority of the joint proprietors shall designate to represent such lot or any person who is named as an associate in said certificate may vote at such election, and the persons receiving the highest number of votes given at such election shall be declared elected trustees.

History: En. Sec. 13, Ch. 18, L. 1905; re-en. Sec. 4249, Rev. C. 1907; re-en. Sec. 6481, R.C.M. 1921; re-en. Sec. 6481, R.C.M. 1935; R.C.M. 1947, 9-113.

35-20-205. Qualifications of trustees — notice of election — vacancies. (1) In all elections after the first, the trustees shall be chosen from among the associates named in said certificate of incorporation or their successors.

(2) Public notice of every annual election shall be given in such manner as the bylaws of the association prescribe.

(3) The trustees shall have the power to fill any vacancy in their number occurring during the term of office for which any trustee was elected.

History: En. Sec. 14, Ch. 18, L. 1905; re-en. Sec. 4250, Rev. C. 1907; re-en. Sec. 6482, R.C.M. 1921; re-en. Sec. 6482, R.C.M. 1935; R.C.M. 1947, 9-114.

35-20-206. Time for election if not held at time fixed in document of incorporation. If the annual election is not held on the day fixed in the certificate of incorporation, the trustees have the power to appoint another day not more than 60 days thereafter and shall give public notice of the time and place, at which time the election may be held with like effect as if held on the day fixed in said certificate. The terms of office of the trustees chosen at such election shall expire at the same time they would have done had they been chosen on the day fixed in the certificate of incorporation.

History: En. Sec. 15, Ch. 18, L. 1905; re-en. Sec. 4251, Rev. C. 1907; re-en. Sec. 6483, R.C.M. 1921; re-en. Sec. 6483, R.C.M. 1935; R.C.M. 1947, 9-115.

35-20-207. Annual report of trustees — duty of county attorney. (1) The trustees at each annual meeting shall make a report in writing, which report shall be signed by at least a majority of the members of such board and shall contain a statement of their doings and of the affairs of the association and an account of the receipts and disbursements during the year preceding. Such report must be duly verified and filed in the office of the clerk of the district court. Such reports shall be noticed for hearing and heard in the same manner as reports of administrators in estates of deceased persons.

(2) It is hereby made the duty of the county attorney of the county in which cemetery is situated to act without charge as the legal advisor of all officers of a cemetery association and to prepare and present any and all reports required to be made by such officers.

History: En. Sec. 16, Ch. 18, L. 1905; re-en. Sec. 4252, Rev. C. 1907; re-en. Sec. 6484, R.C.M. 1921; re-en. Sec. 6484, R.C.M. 1935; amd. Sec. 2, Ch. 98, L. 1939; R.C.M. 1947, 9-116.

Cross-References

Estates, Title 72.

35-20-208. Trustees to manage — quorum — officers — bond of treasurer. (1) The affairs and property of the association shall be managed by the trustees, a majority of whom is a quorum for the transaction of business.

(2) The trustees shall annually appoint from among their number a president, vice-president, secretary, and treasurer who shall hold their offices during the pleasure of the board of trustees. The trustees may require the treasurer to give security for the faithful performance of the duties of his office.

History: En. Sec. 7, Ch. 18, L. 1905; re-en. Sec. 4243, Rev. C. 1907; re-en. Sec. 6475, R.C.M. 1921; re-en. Sec. 6475, R.C.M. 1935; amd. Sec. 1, Ch. 62, L. 1977; R.C.M. 1947, 9-107.

35-20-209. Duties of secretary — record of interments. The secretary shall perform all the duties of a secretary of a corporation and shall, in addition, keep a record of interments in which he shall enter as correctly and carefully as may be the name, age, sex, nativity, and cause of death with date of burial of every person interred in such cemetery, which facts he shall procure from such friends or relatives of the deceased or undertaker as give order for such interment at the time thereof or, in case deceased is a pauper, a stranger, or criminal, from the coroner, county physician, overseer of the poor, or other public officer directing the burial of the same.

History: En. Sec. 8, Ch. 18, L. 1905; re-en. Sec. 4244, Rev. C. 1907; re-en. Sec. 6476, R.C.M. 1921; re-en. Sec. 6476, R.C.M. 1935; R.C.M. 1947, 9-108.

Cross-References

Secretarial recording of appointments, 35-20-308.

Secretary of association as secretary of trustee or board of trustees, 35-20-309.

35-20-210. Record of interments open to public — summary to health officers. (1) Such register or record of interment shall be open to the inspection of the public.

(2) The secretary of every cemetery association shall furnish to the health officers of any corporate town or city or county within the state, when demanded by them, an accurate summary of all the interments during any particular year.

History: En. Sec. 9, Ch. 18, L. 1905; re-en. Sec. 4245, Rev. C. 1907; re-en. Sec. 6477, R.C.M. 1921; re-en. Sec. 6477, R.C.M. 1935; R.C.M. 1947; 9-109.

35-20-211. Penalty for failure to keep record. Any secretary who neglects or refuses to carefully keep such register of burials and record all interments therein, as herein provided, shall be subject to a fine for such offense not exceeding $25.

History: **En. Sec. 10, Ch. 18, L. 1905; re-en. Sec. 4246, Rev. C. 1907; re-en. Sec. 6478, R.C.M. 1921; re-en. Sec. 6478, R.C.M. 1935; R.C.M. 1947, 9-110.**

Cross-References

Duties of secretaries, 35-20-308, 35-20-309.

35-20-212. Authority to acquire land — survey required. (1) Any association incorporated agreeably to the provisions of this chapter may take by purchase or gift and hold, within the county in which the certificate of their incorporation is recorded, land to be held and occupied exclusively for a cemetery for the burial of the dead and for purposes necessary or proper thereto.

(2) Such land or such portion thereof as may from time to time be required for that purpose shall be surveyed and divided into lots of such size as the trustees may direct with such avenues, alleys, and walks as the trustees deem proper. A map of such survey shall be filed and recorded in the office of the county clerk and recorder of the county in which the lands lie, without any fees therefor.

History: **En. Sec. 11, Ch. 18, L. 1905; re-en. Sec. 4247, Rev. C. 1907; re-en. Sec. 6479, R.C.M. 1921; re-en. Sec. 6479, R.C.M. 1935; amd. Sec. 1, Ch. 98, L. 1939; amd. Sec. 1, Ch. 78, L. 1947; amd. Sec. 1, Ch. 98, L. 1974; R.C.M. 1947, 9-111(part).**

35-20-213. Sale of lots. After such map is filed in the office of the county clerk and recorder as aforesaid, the trustees may sell and convey the lots as designated on such map upon terms and subject to such conditions and restrictions, to be inserted in or annexed to the conveyances, as the trustees shall prescribe. Every conveyance of any such lots shall be expressly for burial purposes and no other and shall be in the corporate name of the association, signed by the president and secretary thereof.

History: **En. Sec. 12, Ch. 18, L. 1905; re-en. Sec. 4248, Rev. C. 1907; re-en. Sec. 6480, R.C.M. 1921; re-en. Sec. 6480, R.C.M. 1935; R.C.M. 1947, 9-112.**

35-20-214. Use of proceeds from sale of lots. The proceeds arising from the sale of lots in such cemetery shall be applied to the payment of any debts incurred by the cemetery association in:

(1) the purchase of cemetery grounds and property;

(2) fencing, improving, and embellishing such grounds and avenues leading thereto;

(3) the erection, conduct, repair, or preservation of any structure to be used as a crematory or the creation, maintenance, and operation of a department for the interment of the dead and in defraying the necessary expenses in the management and care thereof and for no other purposes.

History: **En. Sec. 17, Ch. 18, L. 1905; re-en. Sec. 4253, Rev. C. 1907; amd. Sec. 1, Ch. 65, L. 1919; re-en. Sec. 6485, R.C.M. 1921; re-en. Sec. 6485, R.C.M. 1935; R.C.M. 1947, 9-117.**

Cross-References

Fund required, 35-20-301.

Use of fund income, 35-20-312.

35-20-215. Use of gifted property — gratuitous city water. (1) Any association incorporated agreeably to the provisions of this chapter may also take by gift and hold personal property and may sell the same and apply the proceeds thereof to the care, maintenance, and embellishment of said cemetery, but for no other purpose. All real and personal estate which shall have been given or granted to any such association for the maintenance of any monument, the keeping in good order, or the embellishment of any lot or ground situated within the inclosure of such an association shall remain forever to the uses for which the same shall have been given or granted, according to the true intent of the grantor.

(2) Any city or town in or near which a cemetery is maintained under the provisions of this chapter may furnish water to be used within such cemetery and for its maintenance and beautification free of charge to such cemetery association if such city or town shall so elect.

History: En. Sec. 11, Ch. 18, L. 1905; re-en. Sec. 4247, Rev. C. 1907; re-en. Sec. 6479, R.C.M. 1921; re-en. Sec. 6479, R.C.M. 1935; amd. Sec. 1, Ch. 98, L. 1939; amd. Sec. 1, Ch. 78, L. 1947; amd. Sec. 1, Ch. 98, L. 1974; R.C.M. 1947, 9-111(part).

35-20-216. Inalienability of lots. (1) Whenever the lands of such an association are laid out in lots and the lots or any of them are transferred to individual proprietors and there has been an interment in a lot so transferred, that lot from the time of such interment shall forever be inalienable and shall, upon the death of the proprietor, descend to his heirs. However, any one or more of those heirs may release to any other of the heirs his or their interest in the lot. A copy of the release shall be filed with the secretary of the association or with the county clerk and recorder of the county within which the lot is situated. Except by consent of all persons having an interest in the lot, the body of a deceased person may not be interred in that lot unless it is the body of:

(a) a person having an interest in that lot at the time of his decease;
(b) a relative of some person having such interest;
(c) the wife or husband of such a person; or
(d) a relative of such husband or wife.

(2) However, the person or persons in whom the title to such lot or lots or part thereof is vested may at any time sell, convey, and release the lots or parts thereof to the cemetery association maintaining the cemetery in which the lots are situated. A copy of the instruments of such conveyance shall be filed in the same manner provided for release from one heir to another. The cemetery association may use any funds under its control for such purposes and shall hold and may convey such lots or parts thereof to other purchasers in the same manner and with the same effect as it holds and conveys any other of its cemetery lots. This proviso does not allow or authorize the conveyance to the cemetery association of a piece of ground in which the body of a deceased person lawfully interred actually remains interred at the time of the attempted conveyance.

History: En. Sec. 19, Ch. 18, L. 1905; re-en. Sec. 4255, Rev. C. 1907; re-en. Sec. 6487, R.C.M. 1921; re-en. Sec. 6487, R.C.M. 1935; amd. Sec. 2, Ch. 62, L. 1977; R.C.M. 1947, 9-119.

35-20-217. Exemption from taxation and execution — no road construction through cemetery. The cemetery lands and property of any association formed pursuant to this chapter are exempt from all public taxes and assessments and not liable to be sold on execution or applied in payment of debts of any individual proprietors; but the proprietors of lots in such cemetery, their heirs or legal representatives may hold the same exempt therefrom so long as the same remain appropriated to the use of a cemetery, and during that time no street or road shall be laid through such cemetery or any part of the lands held by such association for the purpose aforesaid without the consent of the trustees of such association.

History: **En. Sec. 18, Ch. 18, L. 1905; re-en. Sec. 4254, Rev. C. 1907; re-en. Sec. 6486, R.C.M. 1921; re-en. Sec. 6486, R.C.M. 1935; R.C.M. 1947, 9-118.**

Cross-References

Tax-exempt property, Title 15, ch. 6, part 2.

Part 3

Permanent Care and Improvement Fund
Trustees of Fund

35-20-301. Fund required. Any association formed under the provisions of this chapter or any corporation formed before February 16, 1905, under the laws of this state, which shall have established and be maintaining a cemetery, shall provide in the manner set forth in this chapter for the establishment and maintenance of a permanent fund the income of which shall be devoted to the care, maintenance, and improvement of such cemetery, which fund shall be known as the "permanent care and improvement fund" of such cemetery association.

History: **En. Sec. 20, Ch. 18, L. 1905; re-en. Sec. 4256, Rev. C. 1907; amd. Sec. 1, Ch. 128, L. 1909; re-en. Sec. 6488, R.C.M. 1921; re-en. Sec. 6488, R.C.M. 1935; R.C.M. 1947, 9-120.**

35-20-302. Trustees of fund — appointment by district court — qualifications — powers. (1) Whenever moneys to the amount of $100 shall have been received by such corporation or association, formed, before or after February 16, 1905, either from the sale of lots or from direct payments of such corporation or association toward such a fund by lot owners or otherwise, the trustees of such association shall immediately make application to the judge of the district court for the judicial district in which the cemetery for which such trust fund exists for the appointment of a trustee or of a board of trustees of such fund. The judge of such court shall thereupon appoint a trustee or a board of trustees from a list submitted to him by the trustees of such association. Such trustee or such board shall consist of not less than one or more than five persons, the exact number to rest in the discretion of the trustees of said association.

(2) Such trustee or the members of such board of trustees of such funds must be citizens and freeholders of the state of Montana during all the time they exercise the powers of such trust. Upon the election, appointment, and qualification as hereinafter provided of the trustees of such fund, all of the title to the funds included in said trust and all of the rights, powers, authorities, franchises, and trusts of whatsoever thereunto appertaining shall at once vest in him or them; or, in case of the failure of any of those so chosen and appointed to qualify within 30 days after their appointment, the same shall vest in the one or more who shall qualify. In case of the failure of any of those so chosen and appointed so to qualify within such time, a vacancy shall exist and the judge of said district court shall forthwith appoint from a list submitted to him by the trustees of such association some person possessing the above qualifications

to fill vacancy or vacancies in said board of trustees of such fund; provided, however, that trustees of such fund heretofore appointed by such cemetery associations or district courts shall continue to hold their office as such trustees until terminated in one of the manners in this chapter provided.

(3) The board of trustees shall also have the power and authority to nominate any bank which is authorized to act as a trust company in Montana under state or federal law to be trustee of such trust fund. And in that event the district court shall make appointment of such nominee which shall serve in such capacity without bond but shall be required to make all reports and discharge all the duties and obligations required of individual trustees.

History: En. Sec. 21, Ch. 18, L. 1905; re-en. Sec. 1990, Rev. C. 1907; re-en. Sec. 2, Ch. 128, L. 1909; re-en. Sec. 6489, R.C.M. 1921; amd. Sec. 1, Ch. 68, L. 1925; re-en. Sec. 6489, R.C.M. 1935; amd. Sec. 3, Ch. 98, L. 1939; R.C.M. 1947, 9-121.

Cross-References

Special statutory proceedings, Rule 81(a), M.R.Civ.P. (see Title 25, ch. 20).

Trust administration, Title 72, ch. 34.

35-20-303. Trustees of fund — term. The tenure of office of the trustee or trustees of such fund shall be for the term of 3 years unless they permanently remove from the state of Montana or are removed from office by the judge of said district court for good cause shown or their tenure is otherwise terminated as in this chapter provided.

History: En. Sec. 22, Ch. 18, L. 1905; re-en. Sec. 4258, Rev. C. 1907; re-en. Sec. 6490, R.C.M. 1921; amd. Sec. 2, Ch. 68, L. 1925; re-en. Sec. 6490, R.C.M. 1935; amd. Sec. 4, Ch. 98, L. 1939; R.C.M. 1947, 9-122.

35-20-304. Trustees of fund — bond required — renewal of bond — deposit with county treasurer. (1) Before exercising or having any of the powers, duties, rights, titles, authorities, or franchises appertaining to such trust or to such trusteeship, each person chosen to be a trustee of such fund shall give to the cemetery association for which the trust is maintained a bond in a sum equaling at least 1 1/3 times the value of the property on hand at the time of giving such bond, with good and sufficient sureties thereto, who shall justify in the aggregate in at least double the amount of such bond, the same to be conditioned for the due and faithful performance of his trust until July 1 of the next even-numbered year after the year in which such bond shall be given and until such trustee shall give a new bond as hereinafter provided.

(2) Upon July 1 in each even-numbered year, each trustee shall give a new bond conditioned in the same way, the amount thereof to be determined by the same rule, and with sureties as above provided.

(3) Any failure so to renew bonds within 30 days after the time hereinbefore provided shall be a sufficient ground for removal of any trustee within the discretion of the district court. Such bonds shall all be approved by a judge of the district court for the judicial district in which the cemetery for such trust exists or some part thereof shall be situated and shall be filed with the clerk of the district court of the county in which such cemetery is located.

(4) The value of the property on hand may be reduced for the purpose of fixing the amount of the bond in an amount equal to the value of the money, bonds, and securities which the trustee or trustees of the permanent care and improvement fund may elect to and do deposit with the county treasurer as hereinafter provided.

(5) The trustee or trustees of such fund may deposit such money, bonds, and securities as he or they see fit with the county treasurer of the county in which said cemetery or some part thereof is situated for safekeeping, and it is the duty of the county treasurer to receive and safely keep all such moneys, bonds, and securities and pay them out or deliver them up, or any part thereof, upon the order of such trustee or a majority of the trustees, when countersigned by a judge of said judicial district and not otherwise, and to keep an account with such trustee or trustees of all such transactions. For the safekeeping and payment and delivery of all such moneys, bonds, and securities as herein provided, the treasurer and his sureties are liable upon his official bond.

History: En. Sec. 23, Ch. 18, L. 1905; re-en. Sec. 4259, Rev. C. 1907; re-en. Sec. 6491, R.C.M. 1921; re-en. Sec. 6491, R.C.M. 1935; amd. Sec. 5, Ch. 98, L. 1939; amd. Sec. 1, Ch. 12, L. 1947; R.C.M. 1947, 9-123.

35-20-305. Vacancies — how filled. In the case of the death, resignation, disability, or removal of any member or members of said board of trustees of said fund, the judge of said district court shall forthwith appoint a trustee or trustees to fill such vacancy or vacancies in the same manner as above provided in the case of an original vacancy.

History: En. Sec. 24, Ch. 18, L. 1905; re-en. Sec. 4260, Rev. C. 1907; re-en. Sec. 6492, R.C.M. 1921; amd. Sec. 3, Ch. 68, L. 1925; re-en. Sec. 6492, R.C.M. 1935; R.C.M. 1947, 9-124.

35-20-306. All powers vest in survivors until vacancy filled — succession to powers. (1) In case of the death, resignation, disability, or removal of any one or more of the trustees of such fund, all the rights, titles, powers, authorities, franchises, and trusts whatsoever existing in such trustee at the time of such death, resignation, disability, or removal shall at once without further act or conveyance vest in the survivor or survivors until the vacancy or vacancies so occasioned shall be filled, when the same shall in the same manner vest in the board as so reconstituted.

(2) All newly appointed trustees shall at once upon qualification succeed to an equal share in all the rights, titles, powers, authorities, franchises, and trusts belonging to such board, and the same shall always be vested in the members of such board as actually constituted.

History: En. Sec. 25, Ch. 18, L. 1905; re-en. Sec. 4261, Rev. C. 1907; re-en. Sec. 6493, R.C.M. 1921; re-en. Sec. 6493, R.C.M. 1935; R.C.M. 1947, 9-125.

Cross-References

Trust administration, Title 72, ch. 34.

35-20-307. Title to funds vest in court when no application made for appointment or entire board is vacant — appointment by court — accounting. (1) In the case of the failure of the trustees of such an association to make application to the judge of said district court for the appointment of a board of trustees of such fund, as provided in 35-20-302, or in the case of the death, removal, resignation, or disability of all of the members of such board, the rights, titles, interests, authorities, powers, franchises, and trusts, until the appointment and qualification of a new board of trustees of such fund, shall vest in the district court of the county in which such cemetery, or the greater part thereof, shall be situated.

(2) In such cases such trustee or such board of trustees of such fund shall be appointed by the district court of said county upon application of any person

interested and upon notice of other persons interested, as the judge of said court may order. The trustee or trustees appointed by the judge of said court under the provisions of this section shall have the same rights, powers, authorities, and franchises as the trustee or trustees appointed under any other sections of this chapter.

(3) Such trustee or such board of trustees must annually, or more often if so required by order of such court, file in the office of the clerk of the district court of the county where such cemetery is situated a duly verified account showing a detailed statement of all moneys collected, of all securities on hand, together with all moneys disbursed during the preceding year. Any interested party may apply to the district court for an order requiring such trustee or such board of trustees to make such an accounting at any time.

(4) Any owner of an interest in any lot in the cemetery cared for by such trust, any trustee of the cemetery association, and any trustee of the trust fund shall have the right to make any application to the court provided for in this chapter.

History: En. Sec. 26, Ch. 18, L. 1905; re-en. Sec. 4262, Rev. C. 1907; amd. Sec. 3, Ch. 128, L. 1909; re-en. Sec. 6494, R.C.M. 1921; amd. Sec. 4, Ch. 68, L. 1925; re-en. Sec. 6494, R.C.M. 1935; amd. Sec. 6, Ch. 98, L. 1939; R.C.M. 1947, 9-126.

35-20-308. Recording appointments of trustees. All instruments of appointment of a trustee or of a board of trustees of such funds shall be recorded with the secretary of the association establishing the fund and shall also be filed in the office of the clerk of the district court in the county in which such association is located.

History: En. Sec. 27, Ch. 18, L. 1905; re-en. Sec. 4263, Rev. C. 1907; re-en. Sec. 6495, R.C.M. 1921; re-en. Sec. 6495, R.C.M. 1935; amd. Sec. 7, Ch. 98, L. 1939; R.C.M. 1947, 9-127.

Cross-References

Penalty for failure to keep record, 35-20-211.

35-20-309. Secretary of board. The secretary of the cemetery association shall act as secretary of such trustee or as secretary of such board of trustees of such fund and shall keep a full record of their proceedings.

History: En. Sec. 33, Ch. 18, L. 1905; re-en. Sec. 4269, Rev. C. 1907; re-en. Sec. 6501, R.C.M. 1921; re-en. Sec. 6501, R.C.M. 1935; amd. Sec. 10, Ch. 98, L. 1939; R.C.M. 1947, 9-133.

Cross-References

Penalty for failure to keep record, 35-20-211.

35-20-310. Transfer of moneys received by association to trustees of fund. (1) From and after February 16, 1905, the trustees of such cemetery association as are mentioned in 35-20-302 shall provide by resolution, spread upon the minutes of such association, for the transfer to the trustees of such permanent care and improvement fund of not less than 15% of the moneys received from the sale of cemetery lots by said association, together with all moneys theretofore or thereafter received from the owners of lots for the care of such lots. Such transfer of any such funds then on hand shall then and there be made. Such transfers shall be made thereafter quarterly upon the first days of January, April, July, and October of each year to the trustees of such fund.

(2) If at any time there shall remain in the hands of such association unexpended money, over and above the liabilities of the association, the board of trustees of such association may by a two-thirds vote appropriate the whole or any portion of such unexpended moneys to such permanent care and improvement fund.

History: **En. Sec. 28, Ch. 18, L. 1905; re-en. Sec. 4264, Rev. C. 1907; amd. Sec. 4, Ch. 128, L. 1909; re-en. Sec. 6496, R.C.M. 1921; re-en. Sec. 6496, R.C.M. 1935; amd. Sec. 3, Ch. 98, L. 1974; R.C.M. 1947, 9-128.**

35-20-311. Principal of fund to be reserved — income to be turned over to treasurer. The principal of such fund shall in all cases remain intact and inviolate. But the trustees of such fund shall on January 1 and July 1 in each year turn over to the treasurer of such association all accrued income arising from such fund, and the receipt of such treasurer therefor shall be a sufficient voucher in the hands of such trustees.

History: **En. Sec. 29, Ch. 18, L. 1905; re-en. Sec. 4265, Rev. C. 1907; re-en. Sec. 6497, R.C.M. 1921; re-en. Sec. 6497, R.C.M. 1935; R.C.M. 1947, 9-129.**

35-20-312. Use of income of fund. (1) The income of that portion of such fund received from the sales of lots shall be used in the discretion of the trustees of such association solely for the care, maintenance, and improvement of such cemetery, its grounds, roads, walks, and avenues leading thereto, except as herein provided.

(2) The income from such portion of such funds as shall have been paid in by lot owners for the care of specific lots shall be segregated from the other portion, each lot being credited with its respective income, and shall be used solely for the care of such lots, respectively. In the event of any portion of the income so paid ever remaining unexpended for such purposes for 1 year after its being so paid over to the treasurer of such association, it shall be returned to the trustees of such fund by said treasurer and become a part of the principal.

(3) After February 16, 1905, all cemetery corporations shall distinctly specify in all conveyances of lots therein the percentage of the price received therefor to be transferred under the provisions of this chapter to the permanent care and improvement fund of such corporation and also such further sum if any there be paid by the purchaser for the permanent care of the specific lot or lots thereby conveyed so to be transferred as hereinbefore provided.

History: **En. Sec. 30, Ch. 18, L. 1905; re-en. Sec. 4266, Rev. C. 1907; amd. Sec. 5, Ch. 128, L. 1909; re-en. Sec. 6498, R.C.M. 1921; re-en. Sec. 6498, R.C.M. 1935; R.C.M. 1947, 9-130.**

35-20-313. Investment of fund. The principal of such fund may be invested in the way in which public employees' retirement funds are permitted to be invested in the state of Montana as prescribed by 17-6-211 and not otherwise. Each investment made by the trustee or by the board of trustees shall be subject to the approval of the board of trustees of the cemetery association.

History: **En. Sec. 31, Ch. 18, L. 1905; re-en. Sec. 4267, Rev. C. 1907; re-en. Sec. 6499, R.C.M. 1921; re-en. Sec. 6499, R.C.M. 1935; amd. Sec. 8, Ch. 98, L. 1939; amd. Sec. 4, Ch. 98, L. 1974; R.C.M. 1947, 9-131.**

35-20-314. Compensation of trustees of fund. The trustee or the members of the board of trustees of such permanent care and improvement fund shall receive such compensation as may be agreed upon between such trustee or between such board of trustees of such permanent care and improvement fund on the one hand and the board of trustees of the cemetery association on the other. The fees of such trustee or of the members of the board of trustees shall be paid out of the general fund of the cemetery association until such trust fund shall reach $10,000 and thereafter the same shall be paid out of the income of such fund.

History: En. Sec. 32, Ch. 18, L. 1905; re-en. Sec. 4268, Rev. C. 1907; re-en. Sec. 6500, R.C.M. 1921; re-en. Sec. 6500, R.C.M. 1935; amd. Sec. 9, Ch. 98, L. 1939; amd. Sec. 5, Ch. 98, L. 1974; R.C.M. 1947, 9-132.

35-20-315. Annual report of trustees of fund. The trustee or the board of trustees of such fund shall annually on January 1 make their report of the condition of such trust fund to the trustees of the cemetery association and also to the district court as hereinbefore provided. Such reports shall always be kept by the secretary of such association and by the clerk of the district court and be open to the inspection of any person owning an interest in any lot in the cemetery cared for by such fund.

History: En. Sec. 34, Ch. 18, L. 1905; re-en. Sec. 4270, Rev. C. 1907; re-en. Sec. 6502, R.C.M. 1921; re-en. Sec. 6502, R.C.M. 1935; amd. Sec. 11, Ch. 98, L. 1939; R.C.M. 1947, 9-134.

CHAPTER 21

MAUSOLEUM AND COLUMBARIUM AUTHORITIES

Part 1 — General
(Repealed. Sec. 17, Ch. 52, L. 1997)

Part 2 — Organization and Regulation of Business
(Repealed. Sec. 17, Ch. 52, L. 1997)

Part 3 — Disposition and Removal of Remains
(Repealed. Sec. 17, Ch. 52, L. 1997)

Part 4 — Dedication of Property—Property Rights in Plots
(Repealed. Sec. 17, Ch. 52, L. 1997)

Part 5 — Records
(Repealed)

35-21-501. Repealed.
35-21-502. Repealed.
35-21-503. Repealed.
35-21-504. Repealed.
35-21-505. Repealed.

Part 6 — Endowment Care and Trust Funds
(Repealed. Sec. 17, Ch. 52, L. 1997)

Part 7 — Desecration and Vandalism Regulation of Construction
(Repealed)

35-21-701 through 35-21-708. Repealed.
35-21-709. Repealed.
35-21-710 through 35-21-713. Repealed.

Part 8 — Mausoleum-Columbarium Authorities

35-21-801. Short title.
35-21-802. Definitions.
35-21-803. Exemptions and limitations on applicability.
35-21-804. Incorporation required to transact business.
35-21-805. General powers.
35-21-806 through 35-21-809 reserved.
35-21-810. Disposition of remains — liability.
35-21-811. Limitations on actions — exemptions from liability.
35-21-812. Removal of remains — when removal excepted.
35-21-813 through 35-21-819 reserved.
35-21-820. Map or plat — filing — tax exemption.
35-21-821. Effect of dedication.
35-21-822. Removal of dedication by court.
35-21-823 and 35-21-824 reserved.
35-21-825. Sale of interment plots.
35-21-826. Resale of plots for profit — commissions — penalties.
35-21-827. Property interests in plot — inheritance tax.
35-21-828. Family plots.
35-21-829 and 35-21-830 reserved.
35-21-831. Termination of right of interment — limitation on right.
35-21-832. Conveyance to mausoleum-columbarium authority by plot owner.
35-21-833. Joint tenants.
35-21-834. Co-owners — mausoleum-columbarium authority liability.
35-21-835 through 35-21-839 reserved.
35-21-840. Records.
35-21-841 through 35-21-844 reserved.
35-21-845. Endowment care fund — investment of funds — use of income — permissible investment securities.
35-21-846. Plans for general care and endowment care.
35-21-847. Fund trustees — compensation — annual financial report.
35-21-848. Endowment care fund gifts and contributions.
35-21-849. Signs required for nonendowment and endowment care — penalties.
35-21-850. Annual report of endowment care mausoleum-columbarium.
35-21-851. Director, officer, or trustee loans — penalties.

Part 9 — First Special Service Force Memorial Trust (Renumbered)

35-21-901. Renumbered 10-2-701.
35-21-902. Renumbered 10-2-702.
35-21-903. Renumbered 10-2-703.

Part 1
General
(Repealed. Sec. 17, Ch. 52, L. 1997)

Part Compiler's Comments

Histories of Repealed Sections:

35-21-101. En. Sec. 1, Ch. 35, L. 1949; R.C.M. 1947, 9-501(part).

35-21-102. En. Secs. 1 thru 19, Ch. 35, L. 1949; R.C.M. 1947, 9-501(part), 9-502 thru 9-519; amd. Sec. 11, Ch. 38, L. 1993.

35-21-103. (1), (2)En. Sec. 122, Ch. 35, L. 1949; Sec. 9-1014, R.C.M. 1947; (3)En. Sec. 38, Ch. 35, L. 1949; Sec. 9-703, R.C.M. 1947; R.C.M. 1947, 9-703, 9-1014; amd. Sec. 12, Ch. 38, L. 1993.

Part 2

Organization and Regulation of Business (Repealed. Sec. 17, Ch. 52, L. 1997)

Part Compiler's Comments

Histories of Repealed Sections:

35-21-201. En. Sec. 36, Ch. 35, L. 1949; R.C.M. 1947, 9-701.

35-21-202. En. Sec. 53, Ch. 35, L. 1949; R.C.M. 1947, 9-715.

35-21-203. En. Sec. 39, Ch. 35, L. 1949; R.C.M. 1947, 9-704.

35-21-204. En. Sec. 37, Ch. 35, L. 1949; R.C.M. 1947, 9-702(part); amd. Sec. 13, Ch. 38, L. 1993.

35-21-205. En. Sec. 37, Ch. 35, L. 1949; R.C.M. 1947, 9-702(part).

35-21-206. En. Sec. 114, Ch. 35, L. 1949; R.C.M. 1947, 9-926.

35-21-207. En. Sec. 40, Ch. 35, L. 1949; R.C.M. 1947, 9-705; amd. Sec. 14, Ch. 38, L. 1993.

35-21-208. En. Sec. 41, Ch. 35, L. 1949; R.C.M. 1947, 9-706; amd. Sec. 15, Ch. 38, L. 1993.

35-21-209. En. Sec. 42, Ch. 35, L. 1949; R.C.M. 1947, 9-707.

35-21-210. En. Sec. 43, Ch. 35, L. 1949; R.C.M. 1947, 9-708.

35-21-211. En. Sec. 44, Ch. 35, L. 1949; R.C.M. 1947, 9-709.

35-21-212. En. Sec. 45, Ch. 35, L. 1949; R.C.M. 1947, 9-710.

35-21-213. En. Sec. 46, Ch. 35, L. 1949; R.C.M. 1947, 9-711.

35-21-214. En. Sec. 47, Ch. 35, L. 1949; R.C.M. 1947, 9-712; amd. Sec. 16, Ch. 38, L. 1993.

35-21-215. En. Sec. 48, Ch. 35, L. 1949; R.C.M. 1947, 9-713.

35-21-216. En. Sec. 49, Ch. 35, L. 1949; R.C.M. 1947, 9-714; amd. Sec. 160, Ch. 575, L. 1981; amd. Sec. 17, Ch. 38, L. 1993.

35-21-217. En. Sec. 55, Ch. 35, L. 1949; R.C.M. 1947, 9-716; amd. Sec. 18, Ch. 38, L. 1993.

Part 3

Disposition and Removal of Remains (Repealed. Sec. 17, Ch. 52, L. 1997)

Part Compiler's Comments

Histories of Repealed Sections:

35-21-301. En. Sec. 23, Ch. 35, L. 1949; R.C.M. 1947, 9-601.

35-21-302. En. Sec. 24, Ch. 35, L. 1949; R.C.M. 1947, 9-602; amd. Sec. 19, Ch. 38, L. 1993.

35-21-303. En. Sec. 25, Ch. 35, L. 1949; R.C.M. 1947, 9-603; amd. Sec. 20, Ch. 38, L. 1993.

35-21-304. En. Sec. 26, Ch. 35, L. 1949; amd. Sec. 22, Ch. 41, L. 1963; R.C.M. 1947, 9-604; amd. Sec. 21, Ch. 38, L. 1993.

35-21-305. En. Sec. 27, Ch. 35, L. 1949; R.C.M. 1947, 9-605.

35-21-306. En. Sec. 28, Ch. 35, L. 1949; R.C.M. 1947, 9-606.

35-21-307. En. Sec. 29, Ch. 35, L. 1949; R.C.M. 1947, 9-607.

Part 4

Dedication of Property — Property Rights in Plots (Repealed. Sec. 17, Ch. 52, L. 1997)

Part Compiler's Comments

Histories of Repealed Sections:

35-21-401. En. Sec. 56, Ch. 35, L. 1949; R.C.M. 1947, 9-801.

35-21-402. En. Sec. 57, Ch. 35, L. 1949; R.C.M. 1947, 9-802.

35-21-403. En. Sec. 58, Ch. 35, L. 1949; R.C.M. 1947, 9-803.

35-21-404. En. Sec. 59, Ch. 35, L. 1949; amd. Sec. 3, Ch. 62, L. 1977; R.C.M. 1947, 9-804.

35-21-405. En. Sec. 60, Ch. 35, L. 1949; R.C.M. 1947, 9-805; amd. Sec. 161, Ch. 575, L. 1981.

35-21-406. En. Sec. 61, Ch. 35, L. 1949; R.C.M. 1947, 9-806.

35-21-407. En. Sec. 54, Ch. 35, L. 1949; R.C.M. 1947, 9-807.

35-21-408. En. Sec. 62, Ch. 35, L. 1949; R.C.M. 1947, 9-808.

35-21-409. En. Sec. 63, Ch. 35, L. 1949; R.C.M. 1947, 9-809.

35-21-410. En. Sec. 70, Ch. 35, L. 1949; R.C.M. 1947, 9-816.

35-21-411. En. Sec. 71, Ch. 35, L. 1949; R.C.M. 1947, 9-817.

35-21-412. En. Sec. 64, Ch. 35, L. 1949; R.C.M. 1947, 9-810.

35-21-413. En. Sec. 66, Ch. 35, L. 1949; R.C.M. 1947, 9-812.

35-21-414. En. Sec. 65, Ch. 35, L. 1949; R.C.M. 1947, 9-811.

35-21-415. En. Sec. 67, Ch. 35, L. 1949; R.C.M. 1947, 9-813.

35-21-416. En. Sec. 68, Ch. 35, L. 1949; R.C.M. 1947, 9-814.

35-21-417. En. Sec. 69, Ch. 35, L. 1949; R.C.M. 1947, 9-815; amd. Sec. 22, Ch. 38, L. 1993.

35-21-418. En. Sec. 72, Ch. 35, L. 1949; R.C.M. 1947, 9-818.

35-21-419. En. Sec. 73, Ch. 35, L. 1949; R.C.M. 1947, 9-819.

35-21-420. En. Sec. 74, Ch. 35, L. 1949; R.C.M. 1947, 9-820.

35-21-421. En. Sec. 75, Ch. 35, L. 1949; R.C.M. 1947, 9-821.

35-21-422. En. Sec. 76, Ch. 35, L. 1949; R.C.M. 1947, 9-822.

35-21-423. En. Sec. 77, Ch. 35, L. 1949; R.C.M. 1947, 9-823.

35-21-424. En. Sec. 82, Ch. 35, L. 1949; R.C.M. 1947, 9-828.

35-21-425. En. Secs. 83, 84, Ch. 35, L. 1949; R.C.M. 1947, 9-829, 9-830.

35-21-426. En. Sec. 85, Ch. 35, L. 1949; R.C.M. 1947, 9-831.

35-21-427. En. Sec. 86, Ch. 35, L. 1949; R.C.M. 1947, 9-832.

35-21-428. En. Sec. 88, Ch. 35, L. 1949; R.C.M. 1947, 9-834.

35-21-429. En. Sec. 78, Ch. 35, L. 1949; R.C.M. 1947, 9-824.

35-21-430. En. Sec. 79, Ch. 35, L. 1949; R.C.M. 1947, 9-825.

35-21-431. En. Sec. 80, Ch. 35, L. 1949; R.C.M. 1947, 9-826.

35-21-432. En. Sec. 81, Ch. 35, L. 1949; R.C.M. 1947, 9-827.

35-21-433. En. Sec. 87, Ch. 35, L. 1949; R.C.M. 1947, 9-833.

Part 5

Records (Repealed)

35-21-501. Repealed. Sec. 17, Ch. 52, L. 1997.
History: En. Sec. 34, Ch. 35, L. 1949; R.C.M. 1947, 9-609.

35-21-502. Repealed. Sec. 17, Ch. 52, L. 1997.
History: En. Sec. 33, Ch. 35, L. 1949; R.C.M. 1947, 9-608.

35-21-503. Repealed. Sec. 17, Ch. 52, L. 1997.
History: En. Sec. 35, Ch. 35, L. 1949; R.C.M. 1947, 9-610.

35-21-504. Repealed. Sec. 23, Ch. 38, L. 1993.
History: En. Sec. 51, Ch. 35, L. 1949; R.C.M. 1947, 9-611.

35-21-505. Repealed. Sec. 23, Ch. 38, L. 1993.
History: En. Sec. 52, Ch. 35, L. 1949; R.C.M. 1947, 9-612.

Part 6

Endowment Care and Trust Funds (Repealed. Sec. 17, Ch. 52, L. 1997)

Part Compiler's Comments

Histories of Repealed Sections:

35-21-601. En. Sec. 89, Ch. 35, L. 1949; R.C.M. 1947, 9-901.

35-21-602. En. Sec. 90, Ch. 35, L. 1949; R.C.M. 1947, 9-902.

35-21-603. En. Sec. 91, Ch. 35, L. 1949; R.C.M. 1947, 9-903.

35-21-604. En. Sec. 109, Ch. 35, L. 1949; amd. Sec. 7, Ch. 98, L. 1974; R.C.M. 1947, 9-921(part).

35-21-605. En. Sec. 92, Ch. 35, L. 1949; R.C.M. 1947, 9-904.

35-21-606. En. Sec. 93, Ch. 35, L. 1949; R.C.M. 1947, 9-905.

35-21-607. En. Sec. 94, Ch. 35, L. 1949; R.C.M. 1947, 9-906.

35-21-608. En. Sec. 95, Ch. 35, L. 1949; R.C.M. 1947, 9-907.

35-21-609. En. Sec. 96, Ch. 35, L. 1949; R.C.M. 1947, 9-908.

35-21-610. En. Sec. 97, Ch. 35, L. 1949; R.C.M. 1947, 9-909.

35-21-611. En. Sec. 98, Ch. 35, L. 1949; R.C.M. 1947, 9-910.

35-21-612. En. Sec. 99, Ch. 35, L. 1949; R.C.M. 1947, 9-911.

35-21-613. En. Sec. 100, Ch. 35, L. 1949; R.C.M. 1947, 9-912.

35-21-614. En. Sec. 101, Ch. 35, L. 1949; R.C.M. 1947, 9-913.

35-21-615. En. Sec. 102, Ch. 35, L. 1949; R.C.M. 1947, 9-914.

35-21-616. En. Sec. 103, Ch. 35, L. 1949; R.C.M. 1947, 9-915.

35-21-617. En. Sec. 104, Ch. 35, L. 1949; R.C.M. 1947, 9-916.

35-21-618. En. Sec. 105, Ch. 35, L. 1949; R.C.M. 1947, 9-917.

35-21-619. En. Sec. 106, Ch. 35, L. 1949; R.C.M. 1947, 9-918.

35-21-620. En. Sec. 107, Ch. 35, L. 1949; R.C.M. 1947, 9-919.

35-21-621. En. Sec. 108, Ch. 35, L. 1949; R.C.M. 1947, 9-920.

35-21-622. En. Sec. 110, Ch. 35, L. 1949; R.C.M. 1947, 9-922.

35-21-623. En. Sec. 111, Ch. 35, L. 1949; R.C.M. 1947, 9-923.

35-21-624. En. Sec. 112, Ch. 35, L. 1949; R.C.M. 1947, 9-924.

35-21-625. En. Sec. 115, Ch. 35, L. 1949; R.C.M. 1947, 9-927.

35-21-626. En. Sec. 109, Ch. 35, L. 1949; amd. Sec. 7, Ch. 98, L. 1974; R.C.M. 1947, 9-921(part).

Part 7

Desecration and Vandalism Regulation of Construction (Repealed)

35-21-701 through 35-21-708. Repealed. Sec. 17, Ch. 52, L. 1997.

Compiler's Comments

Histories of Repealed Sections:

35-21-701. En. Sec. 20, Ch. 35, L. 1949; R.C.M. 1947, 9-1001.

35-21-702. En. Sec. 21, Ch. 35, L. 1949; R.C.M. 1947, 9-1002.

35-21-703. En. Sec. 22, Ch. 35, L. 1949; amd. Sec. 4, Ch. 62, L. 1977; R.C.M. 1947, 9-1003.

35-21-704. En. Sec. 30, Ch. 35, L. 1949; amd. Sec. 5, Ch. 62, L. 1977; R.C.M. 1947, 9-1004.

35-21-705. En. Sec. 31, Ch. 35, L. 1949; R.C.M. 1947, 9-1005.

35-21-706. En. Sec. 32, Ch. 35, L. 1949; amd. Sec. 6, Ch. 62, L. 1977; R.C.M. 1947, 9-1006.

35-21-707. En. Sec. 116, Ch. 35, L. 1949; R.C.M. 1947, 9-1007.

35-21-708. En. Sec. 117, Ch. 35, L. 1949; R.C.M. 1947, 9-1008.

35-21-709. Repealed. Sec. 23, Ch. 38, L. 1993.

History: En. Sec. 50, Ch. 35, L. 1949; R.C.M. 1947, 9-1009.

35-21-710 through 35-21-713. Repealed. Sec. 17, Ch. 52, L. 1997.

Compiler's Comments

Histories of Repealed Sections:

35-21-710. En. Sec. 118, Ch. 35, L. 1949; R.C.M. 1947, 9-1010.

35-21-711. En. Sec. 119, Ch. 35, L. 1949; R.C.M. 1947, 9-1011.

35-21-712. En. Sec. 121, Ch. 35, L. 1949; amd. Sec. 7, Ch. 62, L. 1977; R.C.M. 1947, 9-1013.

35-21-713. En. Sec. 120, Ch. 35, L. 1949; R.C.M. 1947, 9-1012.

Part 8

Mausoleum-Columbarium Authorities

Part Compiler's Comments

Effective Date: This part is effective October 1, 1999.

35-21-801. Short title. This part may be cited as the "Mausoleum-Columbarium Act".

History: En. Sec. 1, Ch. 283, L. 1999.

35-21-802. Definitions. For the purposes of this part, the following definitions apply:

(1) "Columbarium" means a structure, room, or other space in a permanent building or outdoor structure containing niches for permanent inurnment of cremated remains in a place used or intended to be used and dedicated for interment purposes.

(2) "Cremated remains" means all human remains recovered after the completion of cremation, including pulverization, that leaves only bone fragments that have been reduced to unidentifiable dimensions.

(3) "Crypt" or "vault" means a space in a mausoleum of sufficient size used or intended to be used to entomb uncremated human remains.

(4) "Directors" means the board of directors, board of trustees, or other governing body of a mausoleum-columbarium authority.

(5) "Entombment" means the placement of human remains in a crypt or vault.

(6) "Human remains" or "remains" means the body of a deceased person and includes the body in any stage of decomposition .

(7) "Interment" means the disposition of human remains by cremation and inurnment or entombment in a place used or intended to be used and dedicated for interment purposes.

(8) "Interment space" means any space in a crypt, vault, or niche of sufficient size for the entombment or inurnment of the remains of one human being.

(9) "Inurnment" means placing cremated remains in an urn or other permanent container and placing it in a niche.

(10) "Mausoleum" means a permanent building or outdoor structure suitable for the entombment of human remains in crypts or vaults in a place used or intended to be used and dedicated for interment purposes.

(11) "Mausoleum-columbarium" means a building or structure containing both a mausoleum and a columbarium.

(12) "Mausoleum-columbarium authority" means any corporation, not for profit, owning, controlling, or operating lands, buildings, or structures used or intended to be used and dedicated for interment purposes by entombment or inurnment but does not refer to any corporation, for profit or not for profit, or any association, corporation sole, or other person owning or controlling cemetery lands or property, including mausoleums or columbariums where interment is also made by ground burial.

(13) "Niche" means a space in a columbarium or urn garden used or intended to be used for inurnment of cremated human remains.

(14) "Plot" or "interment plot" means space in a mausoleum or columbarium used or intended to be used for the interment of human remains. The terms include one or more than one adjoining crypts or vaults or one or more than one adjoining niches.

(15) "Plot owner" or "owner" means a person who is on record as owner of an interment in the office of a mausoleum-columbarium authority.

History: En. Sec. 2, Ch. 283, L. 1999.

35-21-803. Exemptions and limitations on applicability. (1) The provisions of this part relating to private, nonprofit mausoleums and columbariums do not apply to any of the following:

(a) a religious corporation, church, religious society or denomination, or corporation sole administering temporalities of any church or religious society or denomination or any cemetery, mausoleum, or columbarium organized, controlled, and operated by a religious corporation, church, religious society or denomination, or corporation sole; or

(b) any county, town, or city cemetery, mausoleum, or columbarium.

(2) The provisions of this part do not affect the corporate existence or rights or powers of any cemetery corporation organized under the laws of this state in which a mausoleum or columbarium is situated, maintained, or operated in conjunction with a cemetery for the burial of dead human remains by ground interment. This part applies only to mausoleums or columbariums owned, operated, or controlled by a nonprofit mausoleum-columbarium authority organized and governed as provided in this part and owning, operating, or controlling lands, buildings, and structures solely for the entombment and inurnment of human remains.

History: En. Sec. 3, Ch. 283, L. 1999.

35-21-804. Incorporation required to transact business. It is unlawful to engage in the business of a mausoleum-columbarium authority in this state except as an organized nonprofit corporation.

History: En. Sec. 4, Ch. 283, L. 1999.

35-21-805. General powers. (1) A mausoleum-columbarium authority has the same powers granted by law to nonprofit corporations in general, including the power to acquire property by purchase, donation, or devise.

(2) The powers, duties, and privileges conferred and imposed on a mausoleum-columbarium authority under the laws of this state are enlarged as each particular case may require to conform to the provisions of this part.

(3) A nonprofit corporation organized under the laws of this state and authorized by its articles of incorporation to do so may as a mausoleum-columbarium authority establish, maintain, manage, operate, or improve a mausoleum or columbarium.

(4) A mausoleum-columbarium authority may:

(a) adopt, amend, add to, revise, or modify and enforce rules for the use, care, control, management, restriction, and protection of all or any part of its mausoleum or columbarium;

(b) restrict and limit the use of all property within its mausoleum or columbarium;

(c) regulate the uniformity, class, and kind of all markers, monuments, and other structures within the mausoleum-columbarium;

(d) regulate or prohibit the erection of monuments, markers, effigies, and structures within any portion of the mausoleum-columbarium grounds;

(e) regulate or prevent the introduction or care of plants or shrubs within the mausoleum-columbarium grounds;

(f) prevent interment in any part of the mausoleum or columbarium of human remains not entitled to interment and prevent the use of interment plots for purposes violative of its restrictions or rules;

(g) regulate the conduct of persons and prevent improper assemblages in the mausoleum-columbarium or on the grounds; and

(h) make and enforce rules for all other purposes considered necessary by the mausoleum-columbarium authority for the proper conduct of the business of the mausoleum or columbarium, for the transfer of any plot or the right of interment, and for the protection and safeguarding of the premises and the principles, plans, and ideals on which the mausoleum or columbarium is conducted.

(5) Rules adopted pursuant to this section must be subject to inspection in the office of the mausoleum-columbarium authority.

History: En. Sec. 5, Ch. 283, L. 1999.

35-21-806 through 35-21-809 reserved.

35-21-810. Disposition of remains — liability. (1) The right to control the disposition of the remains of a deceased person, unless other directions have been given by the decedent, vests in, and the duty of interment and the liability for the reasonable cost of interment of the remains devolves upon, the following in the order named:

(a) a spouse;

(b) a majority of adult children;

(c) a parent;

(d) a close relative of the decedent; or

(e) in the absence of a person listed in subsections (3)(a) through (3)(d), a personal representative, a public administrator, the deceased through a preneed authorization, or others as designated by the board of funeral service by rule.

(2) The liability for the reasonable cost of interment devolves jointly and severally upon all kin of the decedent listed in subsection (1) in the same degree of kindred and upon the estate of the decedent.

(3) A person signing an authorization for the interment of any remains warrants the truthfulness of any fact set forth in the authorization, the identity of the person whose remains are sought to be interred, and the person's authority to order the interment. The person signing the authorization is personally liable for all damage occasioned by or resulting from breach of the warranty.

(4) The mausoleum-columbarium authority may inter any remains upon the receipt of a written authorization of a person representing to be a person who has acquired the right to control the disposition of the remains. A mausoleum-columbarium authority is not liable for interring pursuant to the authorization unless it has actual notice that presentation is untrue.

History: En. Sec. 6, Ch. 283, L. 1999.

35-21-811. Limitations on actions — exemptions from liability. An action may not lie against any mausoleum-columbarium authority relating to the remains of a person that have been left in its possession for a period of 2 years unless a written contract has been entered into with the mausoleum-columbarium authority for care of the remains or unless permanent interment has been made. This section may not be construed as an extension of the existing statute prescribing the period within which an action based upon a tort must be commenced. A licensed mortician or funeral director is not liable in damages for any cremated human remains after the remains have been deposited with a mausoleum-columbarium authority in Montana.

History: **En. Sec. 7, Ch. 283, L. 1999.**

35-21-812. Removal of remains — when removal excepted. (1) The remains of a deceased person may be removed from a plot in a mausoleum or columbarium with the consent of the mausoleum-columbarium authority and the written consent of one of the following in the order named:

(a) a spouse;

(b) a majority of adult children;

(c) a parent;

(d) the surviving brothers or sisters of the decedent;

(e) a close relative of the decedent; or

(f) in the absence of a person listed in subsections (1)(a) through (1)(e), a personal representative, a public administrator, the decedent through a preneed authorization, or others designated by the board of funeral service by rule.

(2) If the required consent cannot be obtained, permission by the district court in the county where the mausoleum or columbarium is situated is sufficient if the permission does not violate the terms of a written contract or rules of the mausoleum-columbarium authority.

(3) Notice of application to the court for the permission provided for in subsection (2) must be given at least 15 days prior to a hearing on the application to the mausoleum-columbarium authority and to persons listed in subsections (1)(a) through (1)(e) not consenting and to other persons on whom service of notice may be required by the court.

History: **En. Sec. 8, Ch. 283, L. 1999.**

35-21-813 through 35-21-819 reserved.

35-21-820. Map or plat — filing — tax exemption. (1) Each mausoleum-columbarium authority, from time to time as its property may be required for interment purposes, shall prepare a map or plat that delineates the sections, halls, rooms, corridors, elevations, outdoor mausoleums, urn gardens, and other divisions with descriptive names or numbers.

(2) The mausoleum-columbarium authority shall file the map or plat in the office of the clerk and recorder of the county in which all or a portion of the property is situated. The mausoleum-columbarium authority shall also file for record in the county clerk's office a written declaration of dedication of the property delineated on the map or plat dedicating the property exclusively to interment purposes.

(3) Upon the filing of the map or plat and the filing of the declaration for record, the dedication is complete for all purposes. After filing, the property and all mausoleums and columbariums constructed on and burial plots located in the property must be held, occupied, and used exclusively for interment purposes and are exempt from all state, county, and municipal taxes to the same extent as cemetery property intended to be used for the burial of the human dead by ground interment.

(4) Any part or subdivision of the property mapped and plotted may, by order of the directors, be resurveyed and altered in shape and size and an

amended map or plat filed, so long as the change does not disturb the interred remains of any deceased person.

History: **En. Sec. 9, Ch. 283, L. 1999.**

35-21-821. Effect of dedication. (1) The filed map or plat and the recorded declaration are constructive notice to all persons of the dedication of the property to interment purposes.

(2) After property is dedicated to interment purposes, neither the dedication nor the title of a plot owner may be affected by the dissolution of the mausoleum-columbarium authority, by nonuse on its part, by alienation of the property, by any encumbrances, by sale under execution, or otherwise, except as provided in this part.

(3) Dedication to interment purposes pursuant to this section is not invalid as violating any laws against perpetuities or the suspension of the power of alienation of title to or use of property but is expressly permitted and must be considered to be in respect for the dead, a provision for the interment of human remains, and a duty to and for the benefit of the general public.

(4) After dedication and as long as the property remains dedicated to interment purposes, a railroad, street, road, alley, pipeline, pole line, or other public thoroughfare utility may not be laid out through, over, or across any part of the property without the consent of the mausoleum-columbarium authority owning and operating the property or of not less than two-thirds of the owners of interment plots within the property.

History: **En. Sec. 10, Ch. 283, L. 1999.**

35-21-822. Removal of dedication by court. (1) Property dedicated to interment purposes must be held and used exclusively for interment purposes, unless and until the dedication is removed from all or any part of the property by an order and decree of the district court in the county in which the property is situated in a proceeding brought by the mausoleum-columbarium authority for that purpose and upon notice of hearing and proof satisfactory to the court:

(a) that interments were not made in or that all interments have been removed from that portion of the property from which dedication is sought to be removed; and

(b) that the portion of the property from which dedication is sought to be removed is not being used for interment of human remains.

(2) The notice of hearing must be given by publication once a week for at least 3 consecutive weeks in a newspaper of general circulation in the county where the mausoleum or columbarium is located and by posting copies of the notice in three conspicuous places on that portion of the property from which the dedication is to be removed.

(3) The notice must:

(a) describe the portion of the mausoleum or columbarium property sought to be removed from dedication;

(b) state that all remains have been removed or that interments have not been made in the portion of the mausoleum or columbarium property sought to be removed from dedication; and

(c) specify the time and place of the hearing.

History: **En. Sec. 11, Ch. 283, L. 1999.**

35-21-823 and 35-21-824 reserved.

35-21-825. Sale of interment plots. (1) After filing the map or plat and recording the declaration of dedication, a mausoleum-columbarium authority may sell and convey interment plots, subject to the rules then in effect or adopted by the mausoleum-columbarium authority and subject to other limitations, conditions, and restrictions that may be inserted in or made a part of the declaration of dedication by reference or included in the instrument of conveyance of an interment plot.

(2) All conveyances made by a mausoleum-columbarium authority must be signed by an officer or officers as are authorized by the mausoleum-columbarium authority.

(3) All plots, the use of which has been conveyed by deed or certificate of ownership as a separate plot, are indivisible except with the consent of the mausoleum-columbarium authority or as provided by law.

History: En. Sec. 12, Ch. 283, L. 1999.

35-21-826. Resale of plots for profit — commissions — penalties. (1) It is unlawful for any person, firm, or corporation to sell or offer to sell a mausoleum-columbarium plot upon the promise, representation, or inducement of resale at a financial profit.

(2) It is unlawful for a mausoleum-columbarium authority to pay or offer to pay to any person, firm, or corporation, directly or indirectly, a commission, bonus, rebate, or other thing of value for the sale of a plot or services. This subsection does not apply to a person regularly employed by the mausoleum-columbarium authority or to any bona fide agent of the mausoleum-columbarium authority previously appointed for that purpose.

(3) A person who violates a provision of this section or who pays or causes to be paid or offers to pay to any other person, firm, or corporation, directly or indirectly, except as provided in subsection (2), any commission, bonus, rebate, or other thing of value in consideration of recommending or causing a dead human body to be disposed of in any mausoleum or columbarium is guilty of a misdemeanor, and each violation constitutes a separate offense.

History: En. Sec. 13, Ch. 283, L. 1999.

35-21-827. Property interests in plot — inheritance tax. (1) All plots conveyed to individuals are presumed to be the sole and separate property of the owner named in the instrument of conveyance.

(2) The spouse of an owner of a plot containing more than one interment space has a vested right to be interred in the plot, and a person becoming the spouse of the plot owner has a vested right to be interred in the plot if an interment space not subject to the vested right of interment for previous spouses is unoccupied at the time that the person becomes the spouse of the owner.

(3) A conveyance or other action of the owner without the written consent or joinder of the spouse of the owner may not divest the spouse of a vested right of interment, except that a final decree of dissolution of marriage between the owner and the spouse terminates the vested right of interment unless otherwise provided in the decree.

(4) If an interment is not made in a plot that has been transferred by deed or certificate of ownership to an individual owner or if all remains previously interred in the plot are lawfully removed, the plot descends upon the death of

the owner to the owner's heirs-at-law, subject to the rights of interment of the decedent and the owner's surviving spouse unless the owner has disposed of the plot either in a will by a specific devise or by a written declaration filed and recorded in the office of the mausoleum-columbarium authority.

(5) Mausoleum or columbarium property passing to an individual by reason of the death of the owner is exempt from all inheritance taxes.

History: En. Sec. 14, Ch. 283, L. 1999.

35-21-828. Family plots. (1) Whenever the remains of the record owner or of a member of the owner's family or of a relative of a member of the owner's family have been interred in a plot transferred by deed or certificate of ownership to an individual owner and the owner has died without making disposition of the plot either in a will by a specific devise or by a written declaration filed and recorded in the office of the mausoleum-columbarium authority, the plot becomes inalienable and must be held as the family plot of the owner.

(2) In a family plot, one crypt or one niche or interment space in the family plot may be used for the owner's interment and one for the owner's surviving spouse, if any, who by law has a vested right of interment in it. Of those crypts, niches, or spaces remaining, if any, the parents and children of the deceased owner in order of death may be interred without the consent of any person claiming an interest in the plot.

(3) If a parent or child is not surviving, the right of interment goes in the order of death first to the spouse of any child of the record owner and second in the order of death to the next heirs-at-law of the owner or the spouse of any heir-at-law.

(4) A surviving spouse, parent, child, or heir having a right of interment in a family plot may waive the right in favor of any other relative or spouse of a relative of the deceased owner, and upon the waiver, the remains of the person in whose favor the waiver is made may be interred in the plot.

History: En. Sec. 15, Ch. 283, L. 1999.

35-21-829 and 35-21-830 reserved.

35-21-831. Termination of right of interment — limitation on right. (1) A vested right of interment is terminated upon interment elsewhere of the person with the vested right.

(2) A vested right of interment does not give to any person the right to have the person's remains interred in any interment space in which the remains of any deceased person having a prior vested right of interment have been interred or the right to have the remains of more than one deceased person interred in a single interment space in violation of the rules of the mausoleum-columbarium authority controlling the operation of the mausoleum or columbarium in which the interment space is located.

History: En. Sec. 16, Ch. 283, L. 1999.

35-21-832. Conveyance to mausoleum-columbarium authority by plot owner. A mausoleum-columbarium authority may take and hold any plot conveyed or devised to it by the plot owner so that it will be inalienable, and interments must be restricted to the persons designated in the conveyance or devise.

History: En. Sec. 17, Ch. 283, L. 1999.

35-21-833. Joint tenants. (1) In a conveyance to two or more persons as joint tenants, each joint tenant has a vested right of interment in the plot conveyed.

(2) Upon the death of a joint tenant, the title to the plot held in joint tenancy immediately vests in the survivors, subject to the vested right of interment of the remains of the deceased joint tenant.

(3) An affidavit by any person having knowledge of the facts setting forth the fact of the death of one joint tenant and establishing the identity of the surviving joint tenants named in the deed to any plot, when filed with the mausoleum-columbarium authority operating the mausoleum-columbarium in which the plot is located, is a complete authorization to the mausoleum-columbarium authority to permit the use of the unoccupied portion of the plot in accordance with the directions of the surviving joint tenants or their successors in interest.

History: En. Sec. 18, Ch. 283, L. 1999.

35-21-834. Co-owners — mausoleum-columbarium authority liability. (1) When there are several owners of a plot or of rights of interment in the plot, the owners may designate one or more persons to represent the plot and file written notice of the designation with the mausoleum-columbarium authority.

(2) In the absence of a notice provided for in subsection (1) or a written objection to an interment, the mausoleum-columbarium authority is not liable to any owner for interring or permitting an interment in the plot upon the request or direction of any co-owner of the plot.

History: En. Sec. 19, Ch. 283, L. 1999.

35-21-835 through 35-21-839 reserved.

35-21-840. Records. (1) A record must be kept of the ownership of all plots in the mausoleum and columbarium that have been conveyed by the mausoleum-columbarium authority and of all transfers of plots. The transfer of any plot or any right of interment is not complete or effective until recorded on the books of the mausoleum-columbarium authority.

(2) The mausoleum-columbarium authority in charge of any mausoleum or columbarium in which interments are made shall keep a record of all remains, including cremated remains, interred on the premises under its charge, in each case stating the name of each deceased person, date of interment, and name and address of the funeral director.

(3) The records required under this section must be open to inspection during the customary office hours of the mausoleum-columbarium authority.

History: En. Sec. 20, Ch. 283, L. 1999.

35-21-841 through 35-21-844 reserved.

35-21-845. Endowment care fund — investment of funds — use of income — permissible investment securities. (1) A mausoleum-columbarium authority may place its mausoleum or columbarium under endowment care and establish, maintain, and operate an irreducible endowment care fund.

(2) Endowment care and special care funds may be commingled for investment, and the income from the funds must be divided between the

endowment care and special care funds in the proportion that each fund contributed to the principal sum invested. The funds may be held in the name of the mausoleum-columbarium authority or its directors or in the name of the trustees appointed by the mausoleum-columbarium authority.

(3) The principal of all funds for endowment care must forever remain irreducible and inviolable and must be maintained separate and distinct from all other funds.

(4) The principal of all funds for endowment care must be invested, from time to time reinvested, and kept invested, and the income earned must be used solely for the general care, maintenance, and embellishment of the mausoleum or columbarium, or both, and the grounds on which they are situated and must be applied in a manner that the mausoleum-columbarium authority may from time to time determine to be for the best interests of the mausoleum-columbarium.

(5) The endowment care funds must be invested, reinvested, and kept invested in securities that are legal investments for public employees' retirement funds under the laws of the state of Montana.

History: **En. Sec. 21, Ch. 283, L. 1999.**

35-21-846. Plans for general care and endowment care. (1) The mausoleum-columbarium authority may from time to time adopt plans for the general care, maintenance, and embellishment of its mausoleum-columbarium and charge and collect from all subsequent purchasers of plots reasonable sums as, in the judgment of the mausoleum-columbarium authority, will aggregate a fund, the reasonable income from which will provide reasonable care, maintenance, and embellishment.

(2) Upon payment of the purchase price and the amount fixed as a proportionate contribution for endowment care, there may be included in the deed of conveyance or in a separate instrument an agreement to care, in accordance with the plan adopted, for the mausoleum or columbarium and its appurtenances to the proportionate extent that the income received by the mausoleum-columbarium authority from the contribution will permit.

(3) Upon the application of the owner of any plot and upon the payment by the owner of the amount fixed as a reasonable and proportionate contribution for endowment care, a mausoleum-columbarium authority may enter into an agreement with the owner for the care of the owner's plot and its appurtenances.

History: **En. Sec. 22, Ch. 283, L. 1999.**

35-21-847. Fund trustees — compensation — annual financial report. (1) The mausoleum-columbarium authority may appoint a board of trustees, of not less than five members, for its endowment care fund. The members of the board of trustees shall hold office subject to the discretion of the mausoleum-columbarium authority.

(2) The directors of a mausoleum-columbarium authority may be constituted as the trustees of its endowment care fund. When the fund is in the care of the directors as a board of trustees, the secretary of the mausoleum-columbarium authority shall act as secretary of the board of trustees and keep a true record of all of its proceedings. The investments of the

endowment care fund may be held in the name of the mausoleum-columbarium authority.

(3) In lieu of the appointment of a board of trustees of its endowment care fund, a mausoleum-columbarium authority may appoint as sole trustee of its endowment care fund any bank or trust company qualified to engage in the trust business in the state of Montana, and the bank or trust company is authorized to receive and accept the fund and all accretions to the fund, including any accumulated endowment care fund in existence at the time of the bank's or trust company's appointment.

(4) A sum in excess of 5% of the income derived from the fund in any year may not be paid as compensation to the board of trustees for its services as trustee, provided that if 5% of the income divided by the number of trustees is less than $100, each trustee is entitled to receive a minimum of $100 a year for serving as a trustee.

(5) The mausoleum-columbarium authority or the persons in whose names the endowment care funds are held shall, annually and within 90 days after the end of the calendar or fiscal year of the mausoleum-columbarium authority, make and file with the district court in the county in which the mausoleum-columbarium is located a true and correct written report, verified on oath by an officer of the mausoleum-columbarium authority or by the oath of one or more of the trustees, showing the actual financial condition of the endowment care fund.

History: En. Sec. 23, Ch. 283, L. 1999.

35-21-848. Endowment care fund gifts and contributions. (1) (a) A mausoleum-columbarium authority that has established an endowment care fund may take, receive, and hold as a part of or incident to the fund any property, real, personal, or mixed, bequeathed, devised, granted, given, or otherwise contributed to it for its endowment care fund.

(b) A mausoleum-columbarium authority that has established endowment care may also take and hold any property bequeathed, granted, or given to it in trust to apply the principal or proceeds or income to any of the following purposes:

(i) improvement or embellishment of all or any part of the mausoleum or columbarium or any plot in it;

(ii) planting or cultivation of trees, shrubs, or plants in or around any part of the grounds on which the mausoleum-columbarium is situated;

(iii) special care or ornamenting of any part of any plot, section, corridor, or other portion of the mausoleum-columbarium;

(iv) any purpose or use not inconsistent with the purpose for which the mausoleum-columbarium was established or is maintained.

(2) The endowment care fund and all payments or contributions to it are expressly permitted as and for charitable and eleemosynary purposes. Endowment care is a provision for the discharge of a duty from the persons contributing to the persons interred and to be interred in the mausoleum-columbarium and a provision for the benefit and protection of the public by preserving and keeping mausoleum-columbariums from becoming unkept and places of reproach and desolation in the communities in which they are situated.

(3) A payment, gift, grant, bequest, or other contribution for general endowment care is not invalid by reason of any indefiniteness or uncertainty of the persons designated as beneficiaries in the instruments creating the trust, and the fund or any contribution to it is not invalid as violating any law against perpetuities or the suspension of the power of alienation of title to property.

History: En. Sec. 24, Ch. 283, L. 1999.

35-21-849. Signs required for nonendowment and endowment care — penalties. (1) A nonendowment care mausoleum-columbarium is one that does not deposit in an endowment care fund.

(2) Each mausoleum-columbarium authority operating an endowment care mausoleum or columbarium shall post in a conspicuous place in its office or offices where sales are conducted and in a conspicuous place at or near the entrance of the mausoleum or columbarium or its administration building and readily accessible to the public a legible sign with the following phrase: "This is an endowment care property".

(3) Each mausoleum-columbarium authority operating a nonendowment care mausoleum or columbarium shall post in a conspicuous place in its office or offices where sales are conducted and in a conspicuous place at or near the entrance of the mausoleum or columbarium or its administration building and readily accessible to the public a legible sign with the following phrase: "This is not an endowment care property". This phrase likewise must be printed or stamped at the beginning of all contracts, certificates of ownership, or deeds.

(4) Any corporation or its agents or representatives who violate any of the provisions of this section or make any false statement appearing on a sign, contract, agreement, receipt, statement, literature, or other publication are guilty of a misdemeanor.

History: En. Sec. 25, Ch. 283, L. 1999.

35-21-850. Annual report of endowment care mausoleum-columbarium. (1) Each mausoleum-columbarium authority operating an endowment care mausoleum or columbarium shall file in its principal office a written report that must be available to any plot owner and that must contain, as of the close of its last fiscal year:

(a) the amount of principal of the endowment care fund; and

(b) the total amount invested in bonds, securities, or other investments authorized by law and the total amount of cash on hand not invested, which must actually show the financial condition of the trust.

(2) All of the information appearing on the report filed in the mausoleum-columbarium authority office must be revised annually and verified by the president and secretary or two officers authorized by the mausoleum-columbarium authority.

History: En. Sec. 26, Ch. 283, L. 1999.

35-21-851. Director, officer, or trustee loans — penalties. (1) A director or officer of the mausoleum-columbarium authority or trustee of the endowment care or special care fund may not borrow any endowment care or special care funds of the corporation, directly or indirectly.

(2) A director, officer, or trustee authorizing or consenting to a loan and the person who receives a loan in violation of this section are severally guilty of a misdemeanor.

History: En. Sec. 27, Ch. 283, L. 1999.

Part 9

First Special Service Force Memorial Trust (Renumbered)

35-21-901. Renumbered 10-2-701. Sec. 99(3), Ch. 51, L. 1999.

35-21-902. Renumbered 10-2-702. Sec. 99(3), Ch. 51, L. 1999.

35-21-903. Renumbered 10-2-703. Sec. 99(3), Ch. 51, L. 1999.

TITLE 36

RESERVED

TITLE 37

PROFESSIONS AND OCCUPATIONS

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2. General Provisions Relating to Health Care Practitioners.
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4. Dentistry and Dental Hygiene.
5. Osteopathy.
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7. Pharmacy.
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27. Direct-Entry Midwifery.
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29. Denturitry.
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31. Cosmetology.
32. Electrology.
33. Massage Therapy. Repealed. Sec. 7, Ch. 84, L. 1983.
34. Clinical Laboratory Science Practitioners.
35. Certification of Chemical Dependency Counselors.
Chapters 36 through 39 reserved.
40. Sanitarians.
41. Cesspool, Septic Tank, and Privy Cleaners. Repealed.
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53. Timeshare Sales.
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Chapters 55 through 59 reserved.
60. Private Investigators and Patrol Officers.
61. Attorneys at Law.
62. Polygraph Examiners. Repealed. Sec. 128, Ch. 429, L. 1995.
Chapters 63 and 64 reserved.
65. Architecture.

66. Landscape Architecture.
67. Engineers and Land Surveyors.
68. Electricians and Electrical Safety.
69. Plumbers.
70. Heating, Ventilation, Air Conditioning. Repealed. Sec. 195, Ch. 575, L. 1981.
71. Public Contractors. Repealed. Sec. 11, Ch. 558, L. 1995.
72. Construction Blasting.
Chapters 73 and 74 reserved.
75. Direct-Entry Midwifery. Renumbered by Code Commissioner, 1991.

Title Cross-References

Licensing of athletics and boxing and wrestling matches, Title 23, ch. 3.

Licensing of horseracing, Title 23, ch. 4.

Gambling, Title 23, ch. 5.

Licensing of savings and loan agents, 32-2-409.

Licensing and registration of insurance producers, adjusters, consultants, and administrators, Title 33, ch. 17.

Contractor registration, Title 39, ch. 9.

CHAPTER 1

GENERAL PROVISIONS

Part 1 — Duties and Authority of Department, Director, and Boards

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37-1-102. Renumbered 37-1-121 by Code Commissioner, 1981.
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Part 1

Duties and Authority of Department, Director, and Boards

Part Cross-References

Contested cases, Title 2, ch. 4, part 6.

Appointment and qualifications of department heads — duties, 2-15-111, 2-15-112.

Allocation for administrative purposes only, 2-15-121.

Department and boards created, Title 2, ch. 15, part 18.

Department's duties for Board of Horseracing, 23-4-103.

Grounds for disciplinary action as grounds for license denial — conditions to new licenses, 37-1-137.

37-1-101. Duties of department. In addition to the provisions of 2-15-121, the department of commerce may:

(1) provide all the administrative, legal, and clerical services needed by the boards within the department, including corresponding, taking applications for licenses, issuing and denying licenses granted by the boards, renewing licenses, disciplining licensees, registering, taking minutes of board meetings and hearings, and filing;

(2) standardize and keep in Helena all official records of the boards;

(3) make arrangements and provide facilities in Helena for the meetings, hearings, and examinations of each board or elsewhere in the state if requested by the board;

(4) administer and grade examinations required by each board or by law for licensing, unless the board determines that experts or professionals are necessary to administer or grade a particular examination;

(5) investigate complaints received by the department of illegal or unethical conduct of a member of the profession or occupation under the jurisdiction of a board within the department;

(6) assess the costs of the department to the boards on an equitable basis as determined by the department;

(7) adopt rules setting expiration, renewal, and termination dates for licenses;

(8) issue a notice to and pursue an action against a licensed individual, as a party, before the licensed individual's licensing board after a finding of reasonable cause by a screening panel of the board pursuant to 37-1-307(1)(e).

History: En. 82A-1603 by Sec. 1, Ch. 272, L. 1971; R.C.M. 1947, 82A-1603; amd. Sec. 1, Ch. 293, L. 1981; amd. Sec. 3, Ch. 274, L. 1981; amd. Sec. 1, Ch. 390, L. 1983; amd. Sec. 1, Ch. 307, L. 1985; amd. Sec. 42, Ch. 83, L. 1989; amd. Sec. 6, Ch. 413, L. 1989; amd. Sec. 21, Ch. 429, L. 1995.

37-1-102. Renumbered 37-1-121 by Code Commissioner, 1981.

37-1-103. Renumbered 37-1-131 by Code Commissioner, 1981.

37-1-104. Standardized forms. It is the responsibility of the department whenever possible to adopt standardized application, license, and other forms used by the boards within the department. The standardization is to reduce costs, waste, and the use of out-of-date forms and facilitate automated printing and computerization.

History: En. Sec. 2, Ch. 293, L. 1981.

37-1-105. Reporting disciplinary actions against licensees. The department has the authority and shall require that all licensing boards within the department require all applicants for licensure or renewal to report any legal or disciplinary actions against them which relate to the propriety of the applicants' practice of or their fitness to practice the profession or occupation for which they seek licensure. Failure to furnish the required information or the filing of false information is grounds for denial or revocation of a license.

History: En. Sec. 3, Ch. 293, L. 1981.

37-1-106. Biennial report. The department, in cooperation with each licensing board, shall prepare a biennial report. The biennial report of the department shall contain for each board a summary of the board's activities, the board's goals and objectives, a detailed breakdown of board revenues and expenditures, statistics illustrating board activities concerning licensing, summary of complaints received and their disposition, number of licenses revoked or suspended, legislative or court action affecting the board, and any other information the department or board considers relevant. The department shall submit the report to the office of budget and program planning as a part of the information required by 17-7-111.

History: En. Sec. 4, Ch. 293, L. 1981; amd. Sec. 10, Ch. 125, L. 1983; amd. Sec. 32, Ch. 112, L. 1991; amd. Sec. 30, Ch. 349, L. 1993.

37-1-107 through 37-1-120 reserved.

37-1-121. Duties of director. In addition to the powers and duties under 2-15-112 and 2-15-121, the director of commerce shall:

(1) at the request of a party, appoint an impartial hearing examiner to conduct hearings before each board within the department whenever any board holds a contested case hearing. The hearing examiner shall conduct hearings in a proper and legal manner.

(2) hire all personnel to perform the administrative, legal, and clerical functions of the department for the boards. Boards within the department do not have authority to hire personnel.

(3) approve all contracts and expenditures by boards within the department. A board within the department may not enter into a contract or expend funds without the approval of the director.

History: En. 82A-1604 by Sec. 1, Ch. 272, L. 1971; amd. Sec. 14, Ch. 533, L. 1977; R.C.M. 1947, 82A-1604; amd. Sec. 3, Ch. 274, L. 1981; Sec. 37-1-102, MCA 1979; redes. 37-1-121 by Code Commissioner, 1981; amd. Sec. 1, Ch. 165, L. 1985; amd. Sec. 22, Ch. 429, L. 1995.

37-1-122 through 37-1-129 reserved.

37-1-130. Definition. As used in this part, "board" means each board in this title that regulates a profession or occupation and that is allocated to the department of commerce.

History: En. Sec. 5, Ch. 274, L. 1981.

37-1-131. Duties of boards. Each board within the department shall:

(1) set and enforce standards and rules governing the licensing, certification, registration, and conduct of the members of the particular profession or occupation within its jurisdiction;

(2) sit in judgment in hearings for the suspension, revocation, or denial of a license of an actual or potential member of the particular profession or occupation within its jurisdiction. The hearings must be conducted by a hearing examiner when required under 37-1-121(1).

(3) suspend, revoke, or deny a license of a person who the board determines, after a hearing as provided in subsection (2), is guilty of knowingly defrauding, abusing, or aiding in the defrauding or abusing of the workers' compensation system in violation of the provisions of Title 39, chapter 71 or 72;

(4) pay to the department its pro rata share of the assessed costs of the department under 37-1-101(6);

(5) consult with the department before the board initiates a program expansion, under existing legislation, to determine if the board has adequate money and appropriation authority to fully pay all costs associated with the proposed program expansion. The board may not expand a program if the board does not have adequate money and appropriation authority available.

History: En. 82A-1605 by Sec. 1, Ch. 272, L. 1971; amd. Sec. 11, Ch. 250, L. 1973; R.C.M. 1947, 82A-1605(1) thru (3); amd. Sec. 3, Ch. 274, L. 1981; Sec. 37-1-103, MCA 1979; redes. 37-1-131 by Code Commissioner, 1981; amd. Sec. 2, Ch. 165, L. 1985; amd. Sec. 1, Ch. 90, L. 1991; amd. Sec. 10, Ch. 619, L. 1993; amd. Sec. 23, Ch. 429, L. 1995.

37-1-132. Nominees for appointment to licensing and regulatory boards. Private associations and members of the public may submit to the governor lists of nominees for appointment to professional and occupational licensing and regulatory boards. The governor may consider nominees from the lists when making appointments to such boards.

History: En. Sec. 9, Ch. 244, L. 1981.

Cross-References

Appointing power, Art. VI, sec. 8, Mont. Const.

37-1-133. Board members' compensation and expenses. Unless otherwise provided by law, each member of a board allocated to the department is entitled to receive $50 per day compensation and travel expenses, as provided for in 2-18-501 through 2-18-503, for each day spent on official board business. Board members who conduct official board business in their city of residence are entitled to receive a midday meal allowance, as provided for in 2-18-502. Ex officio board members may not receive compensation but shall receive travel expenses.

History: En. Sec. 1, Ch. 474, L. 1981; amd. Sec. 2, Ch. 123, L. 1983; amd. Sec. 4, Ch. 672, L. 1983.

37-1-134. Licensing boards to establish fees commensurate with costs. All licensing boards allocated to the department shall set fees reasonably related to the respective program area costs. Unless otherwise provided by law, each board within the department may establish fees including but not limited to fees for program areas such as application, examination, renewal, reciprocity, late renewal, and continuing education. Board costs not related to a specific program area may be equitably distributed to program areas as determined by the board. Each board shall maintain records sufficient to support the fees charged for each program area.

History: En. Sec. 1, Ch. 345, L. 1981.

37-1-135. Licensing investigation and review — record access. Any person, firm, corporation, or association that performs background reviews, complaint investigations, or peer reviews pursuant to an agreement or contract with a state professional or occupational licensing board shall make available to the board and the legislative auditor, upon request, any and all records or other information gathered or compiled during the course of the background review, complaint investigation, or peer review.

History: En. Sec. 1, Ch. 242, L. 1981.

Cross-References

Procurement of services, Title 18, ch. 8.

37-1-136. Disciplinary authority of boards — injunctions. (1) Each licensing board allocated to the department has the authority, in addition to any other penalty or disciplinary action provided by law, to adopt rules specifying grounds for disciplinary action and rules providing for:

(a) revocation of a license;

(b) suspension of its judgment of revocation on terms and conditions determined by the board;

(c) suspension of the right to practice for a period not exceeding 1 year;

(d) placing a licensee on probation;

(e) reprimand or censure of a licensee; or

(f) taking any other action in relation to disciplining a licensee as the board in its discretion considers proper.

(2) Any disciplinary action by a board shall be conducted as a contested case hearing under the provisions of the Montana Administrative Procedure Act.

(3) Notwithstanding any other provision of law, a board may maintain an action to enjoin a person from engaging in the practice of the occupation or profession regulated by the board until a license to practice is procured. A person who has been enjoined and who violates the injunction is punishable for contempt of court.

History: En. Sec. 1, Ch. 246, L. 1981.

Cross-References

Issuance of injunctions on nonjudicial days, 3-1-302, 3-5-302.

Contempts, Title 3, ch. 1, part 5.

Injunctions, Rule 65, M.R.Civ.P. (see Title 25, ch. 20); Title 27, ch. 19.

Affidavits, Title 26, ch. 1, part 10.

37-1-137. Grounds for disciplinary action as grounds for license denial — conditions to new licenses. (1) Unless otherwise provided by law, grounds for disciplinary action by a board allocated to the department of commerce against a holder of an occupational or professional license may be, under appropriate circumstances, grounds for either issuance of a probationary license for a period not to exceed 1 year or denial of a license to an applicant.

(2) The denial of a license or the issuance of a probationary license under subsection (1) must be conducted as a contested case hearing under the provisions of the Montana Administrative Procedure Act.

History: En. Sec. 1, Ch. 273, L. 1985.

37-1-138 through 37-1-140 reserved.

37-1-141. Nonrenewal of license for three years — termination. Unless otherwise provided by statute or rule, a lapsed occupational or professional license that is not renewed within 3 years of the most recent renewal date automatically terminates. The terminated license may not be reinstated, and a new original license must be obtained by passing a qualifying examination and paying the appropriate fee.

History: En. Sec. 1, Ch. 272, L. 1985.

Part 2
Licensure of Criminal Offenders

Part Cross-References

Criminal justice policy — rights of convicted, Art. II, sec. 28, Mont. Const.

Gambling — qualifications for licensure, 23-5-176.

Building and loan agent's license revocable for violation of criminal statutes, 32-2-409.

No outfitter's license issued to criminal offender, 37-47-302.

Effect of conviction, 46-18-801.

Supervision of probationers and parolees, Title 46, ch. 23, part 10.

37-1-201. Purpose. It is the public policy of the legislature of the state of Montana to encourage and contribute to the rehabilitation of criminal offenders and to assist them in the assumption of the responsibilities of citizenship. The legislature finds that the public is best protected when such offenders are given the opportunity to secure employment or to engage in a meaningful occupation, while licensure must be conferred with prudence to protect the interests of the public.

History: En. 66-4001 by Sec. 1, Ch. 490, L. 1975; R.C.M. 1947, 66-4001.

37-1-202. Intent and policy. It is the intent of the legislature and the declared policy of the state that occupational licensure be granted or revoked as a police power of the state in its protection of the public health, safety, and welfare.

History: En. 66-4002 by Sec. 2, Ch. 490, L. 1975; R.C.M. 1947, 66-4002.

37-1-203. Conviction not a sole basis for denial. Criminal convictions shall not operate as an automatic bar to being licensed to enter any occupation in the state of Montana. No licensing authority shall refuse to license a person solely on the basis of a previous criminal conviction; provided, however, where a license applicant has been convicted of a criminal offense and such criminal offense relates to the public health, welfare, and safety as it applies to the occupation for which the license is sought, the licensing agency may, after investigation, find that the applicant so convicted has not been sufficiently rehabilitated as to warrant the public trust and deny the issuance of a license.

History: En. 66-4003 by Sec. 3, Ch. 490, L. 1975; R.C.M. 1947, 66-4003.

37-1-204. Statement of reasons for denial. When a licensing agency prohibits an applicant from being licensed wholly or partially on the basis of a criminal conviction, the agency shall state explicitly in writing the reasons for the decision.

History: En. 66-4004 by Sec. 4, Ch. 490, L. 1975; R.C.M. 1947, 66-4004.

Cross-References

Findings of fact required, 2-4-623.

Application of contested case procedure to licensing, 2-4-631.

37-1-205. Licensure on completion of supervision. Completion of probation or parole supervision without any subsequent criminal conviction shall be evidence of rehabilitation; provided, however, that the facts surrounding the situation that led to the probation or parole supervision may be considered as they relate to the occupation for which a license is sought and provided that nothing herein shall be construed to prohibit licensure of a person while he is under state supervision if the licensing agency finds insufficient evidence to preclude such licensure.

History: En. 66-4005 by Sec. 5, Ch. 490, L. 1975; R.C.M. 1947, 66-4005.

Part 3

Uniform Professional Licensing and Regulation Procedures

37-1-301. Purpose. The purpose of this part is to establish uniform guidelines for the licensing and regulation of professions and occupations under the jurisdiction of professional and occupational licensing boards governed by this part.

History: En. Sec. 1, Ch. 429, L. 1995.

37-1-302. Definitions. As used in this part, the following definitions apply:

(1) "Board" means a licensing board created under Title 2, chapter 15, that regulates a profession or occupation and that is administratively attached to the department as provided in 2-15-121.

(2) "Complaint" means a written allegation filed with a board that, if true, warrants an injunction, disciplinary action against a licensee, or denial of an application submitted by a license applicant.

(3) "Department" means the department of commerce.

(4) "Inspection" means the periodic examination of premises, equipment, or procedures or of a practitioner by the department to determine whether the practitioner's profession or occupation is being conducted in a manner consistent with the public health, safety, and welfare.

(5) "Investigation" means the inquiry, analysis, audit, or other pursuit of information by the department, with respect to a written complaint or other information before a board, that is carried out for the purpose of determining:

(a) whether a person has violated a provision of law justifying discipline against the person;

(b) the status of compliance with a stipulation or order of the board;

(c) whether a license should be granted, denied, or conditionally issued; or

(d) whether a board should seek an injunction.

(6) "License" means permission granted under a chapter of this title to engage in or practice at a specific level in a profession or occupation, regardless of the specific term, such as permit, certificate, recognition, or registration, used for the permission.

(7) "Profession" or "occupation" means a profession or occupation regulated by a board.

History: En. Sec. 2, Ch. 429, L. 1995.

37-1-303. Scope. This part governs the licensure, the practice and unauthorized practice, and the discipline of professions and occupations governed by this title unless otherwise provided by statutes relating to a specific board and the profession or occupation it regulates. The provisions of this chapter must be construed to supplement the statutes relating to a specific board and the profession it regulates. The method for initiating and judging a disciplinary proceeding, specified in 37-1-307(1)(e), must be used by a board in all disciplinary proceedings involving licensed professionals.

History: En. Sec. 3, Ch. 429, L. 1995.

37-1-304. Licensure of out-of-state applicants — reciprocity. (1) A board may issue a license to practice without examination to a person licensed in another state if the board determines that:

(a) the other state's license standards at the time of application to this state are substantially equivalent to or greater than the standards in this state; and

(b) there is no reason to deny the license under the laws of this state governing the profession or occupation.

(2) The license may not be issued until the board receives verification from the state or states in which the person is licensed that the person is currently licensed and is not subject to pending charges or final disciplinary action for unprofessional conduct or impairment.

(3) This section does not prevent a board from entering into a reciprocity agreement with the licensing authority of another state or jurisdiction. The agreement may not permit out-of-state licensees to obtain a license by reciprocity within this state if the license applicant has not met standards that are substantially equivalent to or greater than the standards required in this state as determined by the board on a case-by-case basis.

History: En. Sec. 4, Ch. 429, L. 1995; amd. Sec. 1, Ch. 210, L. 1997.

37-1-305. Temporary practice permits. (1) A board may issue a temporary practice permit to a person licensed in another state that has licensing standards substantially equivalent to those of this state if the board determines that there is no reason to deny the license under the laws of this state governing the profession or occupation. The person may practice under the permit until a license is granted or until a notice of proposal to deny a license is issued. The permit may not be issued until the board receives verification from the state or states in which the person is licensed that the person is currently licensed and is not subject to pending charges or final disciplinary action for unprofessional conduct or impairment.

(2) A board may issue a temporary practice permit to a person seeking licensure in this state who has met all licensure requirements other than passage of the licensing examination. Except as provided in 37-68-311 and 37-69-306, a permit is valid until the person either fails the first license examination for which the person is eligible following issuance of the permit or passes the examination and is granted a license.

History: En. Sec. 5, Ch. 429, L. 1995; amd. Sec. 1, Ch. 203, L. 1999.

Compiler's Comments

1999 Amendment: Chapter 203 in (2) at beginning of second sentence inserted exception clause; and made minor changes in style. Amendment effective October 1, 1999.

37-1-306. Continuing education. A board may require licensees to participate in flexible, cost-efficient, effective, and geographically accessible continuing education.

History: En. Sec. 6, Ch. 429, L. 1995.

37-1-307. Board authority. (1) A board may:

(a) hold hearings as provided in this part;

(b) issue subpoenas and administer oaths in connection with investigations and disciplinary proceedings under this part. Subpoenas must be relevant to the complaint, issued by a majority vote of board members not serving on the screening panel described in subsection (1)(e), and signed by the presiding officer of the board. Subpoenas may be enforced as provided in 2-4-104.

(c) authorize depositions and other discovery procedures under the Montana Rules of Civil Procedure in connection with an investigation, hearing, or proceeding held under this part;

(d) compel attendance of witnesses and the production of documents. Subpoenas may be enforced as provided in 2-4-104.

(e) establish a screening panel that determines whether there is reasonable cause to believe that a licensee has violated a statute or rule justifying disciplinary proceedings. The assigned board members may not subsequently participate in a hearing of the case. The final decision on the case must be made by a majority of the board members who did not serve on the screening panel for the case.

(f) grant or deny a license and, upon a finding of unprofessional conduct by an applicant or license holder, impose a sanction provided by this chapter.

(2) Each board is designated as a criminal justice agency within the meaning of 44-5-103 for the purpose of obtaining confidential criminal justice information regarding its licensees and license applicants and regarding possible unlicensed practice.

[(3) Each board shall require a license applicant to provide the applicant's social security number as a part of the application. Each board shall keep the social security number from this source confidential, except that a board may provide the number to the department of public health and human services for use in administering Title IV-D of the Social Security Act.] *(Bracketed language terminates on occurrence of contingency—sec. 1, Ch. 27, L. 1999.)*

History: En. Sec. 7, Ch. 429, L. 1995; amd. Sec. 22, Ch. 552, L. 1997; amd. Sec. 2, Ch. 230, L. 1999.

Compiler's Comments

1999 Amendment: Chapter 230 at end of (2) inserted "and regarding possible unlicensed practice". Amendment effective October 1, 1999.

Contingent Termination — Request for Federal Exemptions: Section 1, Ch. 27, L. 1999, revised sec. 104, Ch. 552, L. 1997, to contain the following contingent termination provisions and order that the department of public health and human services seek federal exemptions: "(1) [Sections 9, 11, 22 through 24, and 95] [37-1-307, 40-1-107, 40-4-105, 40-5-922, 40-5-924, and 61-5-107] and the bracketed language in [sections 1 through 3, 10, 25, 45, and 89] [40-4-204, 40-5-226, 40-5-901, 40-5-906, 40-5-907, 40-5-923, and 40-6-116] terminate on the date of the suspension if the federal government suspends federal payments to this state for this state's child support enforcement program and for this state's program relating to temporary assistance to needy families because of this state's failure to enact law as required by the federal Personal Responsibility and Work Opportunity Reconciliation Act of 1996.

(2) [Sections 9, 11, 22 through 24, and 95] [37-1-307, 40-1-107, 40-4-105, 40-5-922, 40-5-924, and 61-5-107] and the bracketed language in [sections 1 through 3, 10, 25, 45, and 89] [40-4-204, 40-5-226, 40-5-901, 40-5-906, 40-5-907, 40-5-923, and 40-6-116] terminate on the date that a final decision is rendered in federal court invalidating the child support provisions of the federal Personal Responsibility and Work Opportunity Reconciliation Act of 1996.

(3) If the director of the department of public health and human services certifies to the governor and the secretary of state in writing that one of the following provisions is no longer required by federal law because of repeal of or amendment to federal statutes that require that provision, the provision terminates on the date the certification takes effect:

(a) [section 9] [40-5-922];

(b) [section 11] [40-5-924];

(c) [sections 22 through 24] [37-1-307, 40-1-107, and 40-4-105];

(d) [section 95] [61-5-107];

(e) the bracketed provisions in [sections 1 through 3, 10, 25, 45, and 89] [40-4-204, 40-5-226, 40-5-901, 40-5-906, 40-5-907, 40-5-923, and 40-6-116].

(4) If the bracketed language in [sections 1 through 3, 10, 25, 45, and 89] [40-4-204, 40-5-226, 40-5-901, 40-5-906, 40-5-907, 40-5-923, and 40-6-116] terminates, the code commissioner is instructed to renumber subsections, adjust internal references, and correct grammar and arrangement." Amendment effective February 18, 1999.

37-1-308. Unprofessional conduct — complaint — investigation — immunity — exceptions. (1) Except as provided in subsection (3), a person, government, or private entity may submit a written complaint to the department charging a licensee or license applicant with a violation of this part and specifying the grounds for the complaint.

(2) If the department receives a written complaint or otherwise obtains information that a licensee or license applicant may have committed a violation of this part, the department may, with the concurrence of a member of the screening panel established in 37-1-307, investigate to determine whether there is reasonable cause to believe that the licensee or license applicant has committed the violation. A person or private entity, but not a government entity, filing a complaint under this section in good faith is immune from suit in a civil action related to the filing or contents of the complaint.

(3) A person under legal custody of a county detention center or incarcerated under legal custody of the department of corrections may not file

a complaint under subsection (1) against a licensed or certified provider of health care or rehabilitative services for services that were provided to the person while detained or confined in a county detention center or incarcerated under legal custody of the department of corrections unless the complaint is first reviewed by a correctional health care review team provided for in 37-1-331.

History: En. Sec. 8, Ch. 429, L. 1995; amd. Sec. 4, Ch. 475, L. 1997; amd. Sec. 1, Ch. 375, L. 1999.

Compiler's Comments

1999 Amendment: Chapter 375 substituted present (3) precluding certain complaints by incarcerated persons for former (3) that read: "(3) A person may not file a complaint under subsection (1) against a licensed or certified provider of health care or rehabilitative services for services that were provided to the person while incarcerated under the legal custody of the department of corrections. If the department of corrections has reason to believe that there has been a violation of this part arising out of health care or rehabilitative services provided to a person incarcerated under the legal custody of the department of corrections, the department of corrections shall report the possible violation to the department for appropriate action under subsection (2)". Amendment effective July 1, 1999.

37-1-309. Notice — request for hearing. (1) If a reasonable cause determination is made pursuant to 37-1-307 that a violation of this part has occurred, a notice must be prepared by department legal staff and served on the alleged violator. The notice may be served by certified mail to the current address on file with the board or by other means authorized by the Montana Rules of Civil Procedure.

(2) A licensee or license applicant shall give the board the licensee's or applicant's current address and any change of address within 30 days of the change.

(3) The notice must state that the licensee or license applicant may request a hearing to contest the charge or charges. A request for a hearing must be in writing and received in the offices of the department within 20 days after the licensee's receipt of the notice. Failure to request a hearing constitutes a default on the charge or charges, and the board may enter a decision on the basis of the facts available to it.

History: En. Sec. 9, Ch. 429, L. 1995.

37-1-310. Hearing — adjudicative procedures. The procedures in Title 2, chapter 4, governing adjudicative proceedings before agencies; the Montana Rules of Civil Procedure; and the Montana Rules of Evidence govern a hearing under this part. A board has all the powers and duties granted by Title 2, chapter 4.

History: En. Sec. 10, Ch. 429, L. 1995.

37-1-311. Findings of fact — order — report. (1) If the board decides by a preponderance of the evidence, following a hearing or on default, that a violation of this part occurred, the department shall prepare and serve the board's findings of fact and an order as provided in Title 2, chapter 4. If the licensee or license applicant is found not to have violated this part, the department shall prepare and serve the board's findings of fact and an order of dismissal of the charges.

(2) The department may report the issuance of a notice and final order to:

(a) the person or entity who brought to the department's attention information that resulted in the initiation of the proceeding;

(b) appropriate public and private organizations that serve the profession or occupation; and

(c) the public.

History: **En. Sec. 11, Ch. 429, L. 1995.**

37-1-312. Sanctions — stay — costs — stipulations. (1) Upon a decision that a licensee or license applicant has violated this part or is unable to practice with reasonable skill and safety due to a physical or mental condition or upon stipulation of the parties as provided in subsection (3), the board may issue an order providing for one or any combination of the following sanctions:

(a) revocation of the license;

(b) suspension of the license for a fixed or indefinite term;

(c) restriction or limitation of the practice;

(d) satisfactory completion of a specific program of remedial education or treatment;

(e) monitoring of the practice by a supervisor approved by the disciplining authority;

(f) censure or reprimand, either public or private;

(g) compliance with conditions of probation for a designated period of time;

(h) payment of a fine not to exceed $1,000 for each violation. Fines must be deposited in the state general fund.

(i) denial of a license application;

(j) refund of costs and fees billed to and collected from a consumer.

(2) A sanction may be totally or partly stayed by the board. To determine which sanctions are appropriate, the board shall first consider the sanctions that are necessary to protect or compensate the public. Only after the determination has been made may the board consider and include in the order any requirements designed to rehabilitate the licensee or license applicant.

(3) The licensee or license applicant may enter into a stipulated agreement resolving potential or pending charges that includes one or more of the sanctions in this section. The stipulation is an informal disposition for the purposes of 2-4-603.

(4) A licensee shall surrender a suspended or revoked license to the board within 24 hours after receiving notification of the suspension or revocation by mailing it or delivering it personally to the board.

History: **En. Sec. 12, Ch. 429, L. 1995.**

37-1-313. Appeal. A person who is disciplined or denied a license may appeal the decision to the district court as provided in Title 2, chapter 4.

History: **En. Sec. 13, Ch. 429, L. 1995.**

37-1-314. Reinstatement. A licensee whose license has been suspended or revoked under this part may petition the board for reinstatement after an interval set by the board in the order. The board may hold a hearing on the petition and may deny the petition or order reinstatement and impose terms and conditions as provided in 37-1-312. The board may require the successful completion of an examination as a condition of reinstatement and may treat a licensee whose license has been revoked or suspended as a new applicant for purposes of establishing the requisite qualifications of licensure.

History: **En. Sec. 14, Ch. 429, L. 1995.**

37-1-315. Enforcement of fine. (1) If payment of a fine is included in an order and timely payment is not made as directed in the order, the board may enforce the order for payment in the district court of the first judicial district.

(2) In a proceeding for enforcement of an order of payment of a fine, the order is conclusive proof of the validity of the order of payment and the terms of payment.

History: **En. Sec. 15, Ch. 429, L. 1995.**

37-1-316. Unprofessional conduct. The following is unprofessional conduct for a licensee or license applicant governed by this chapter:

(1) conviction, including conviction following a plea of nolo contendere, of a crime relating to or committed during the course of the person's practice or involving violence, use or sale of drugs, fraud, deceit, or theft, whether or not an appeal is pending;

(2) permitting, aiding, abetting, or conspiring with a person to violate or circumvent a law relating to licensure or certification;

(3) fraud, misrepresentation, deception, or concealment of a material fact in applying for or assisting in securing a license or license renewal or in taking an examination required for licensure;

(4) signing or issuing, in the licensee's professional capacity, a document or statement that the licensee knows or reasonably ought to know contains a false or misleading statement;

(5) a misleading, deceptive, false, or fraudulent advertisement or other representation in the conduct of the profession or occupation;

(6) offering, giving, or promising anything of value or benefit to a federal, state, or local government employee or official for the purpose of influencing the employee or official to circumvent a federal, state, or local law, rule, or ordinance governing the licensee's profession or occupation;

(7) denial, suspension, revocation, probation, fine, or other license restriction or discipline against a licensee by a state, province, territory, or Indian tribal government or the federal government if the action is not on appeal, under judicial review, or has been satisfied.

(8) failure to comply with a term, condition, or limitation of a license by final order of a board;

(9) revealing confidential information obtained as the result of a professional relationship without the prior consent of the recipient of services, except as authorized or required by law;

(10) addiction to or dependency on a habit-forming drug or controlled substance as defined in Title 50, chapter 32, as a result of illegal use of the drug or controlled substance;

(11) use of a habit-forming drug or controlled substance as defined in Title 50, chapter 32, to the extent that the use impairs the user physically or mentally;

(12) having a physical or mental disability that renders the licensee or license applicant unable to practice the profession or occupation with reasonable skill and safety;

(13) engaging in conduct in the course of one's practice while suffering from a contagious or infectious disease involving serious risk to public health or without taking adequate precautions, including but not limited to informed consent, protective gear, or cessation of practice;

(14) misappropriating property or funds from a client or workplace or failing to comply with a board rule regarding the accounting and distribution of a client's property or funds;

(15) interference with an investigation or disciplinary proceeding by willful misrepresentation of facts, by the use of threats or harassment against or inducement to a client or witness to prevent them from providing evidence in a disciplinary proceeding or other legal action, or by use of threats or harassment against or inducement to a person to prevent or attempt to prevent a disciplinary proceeding or other legal action from being filed, prosecuted, or completed;

(16) assisting in the unlicensed practice of a profession or occupation or allowing another person or organization to practice or offer to practice by use of the licensee's license;

(17) failing to report the institution of or final action on a malpractice action, including a final decision on appeal, against the licensee or of an action against the licensee by a:

(a) peer review committee;

(b) professional association; or

(c) local, state, federal, territorial, provincial, or Indian tribal government;

(18) conduct that does not meet the generally accepted standards of practice. A certified copy of a malpractice judgment against the licensee or license applicant or of a tort judgment in an action involving an act or omission occurring during the scope and course of the practice is conclusive evidence of but is not needed to prove conduct that does not meet generally accepted standards.

History: En. Sec. 16, Ch. 429, L. 1995.

37-1-317. Practice without license — investigation of complaint — injunction — penalties. (1) The department shall investigate complaints or other information received concerning practice by an unlicensed person of a profession or occupation for which a license is required by this title.

(2) (a) Unless otherwise provided by statute, a board may file an action to enjoin a person from practicing, without a license, a profession or occupation for which a license is required by this title. In addition to the penalty provided for in 37-1-318, a person violating an injunction issued pursuant to this section may be held in contempt of court.

(b) A person subject to an injunction for practicing without a license may also be subject to criminal prosecution. In a complaint for an injunction or in an affidavit, information, or indictment alleging that a person has engaged in unlicensed practice, it is sufficient to charge that the person engaged in the unlicensed practice of a licensed profession or occupation on a certain day in a certain county without averring further or more particular facts concerning the violation.

(3) Unless otherwise provided by statute, a person practicing a licensed profession or occupation in this state without complying with the licensing

provisions of this title is guilty of a misdemeanor punishable by a fine of not less than $250 or more than $1,000, imprisonment in the county jail for not less than 90 days or more than 1 year, or both. Each violation of the provisions of this chapter constitutes a separate offense.

(4) The department may issue a citation to and collect a fine, as provided in 37-68-316 and 37-69-310, from a person at a job site who is performing plumbing or electrical work and who fails to display a license or proof of licensure at the request of an employee of the department who bears responsibility for compliance with licensure requirements.

History: En. Sec. 17, Ch. 429, L. 1995; amd. Sec. 3, Ch. 230, L. 1999; amd. Sec. 1, Ch. 402, L. 1999.

Compiler's Comments

1999 Amendments — Composite Section: Chapter 230 in middle of (1) after "complaints" inserted "or other information received"; at beginning of (2)(a) inserted "Unless otherwise provided by statute" and inserted second sentence allowing person violating injunction to be held in contempt of court in addition to penalty; inserted (2)(b) providing that person subject to injunction for practicing without license is subject to criminal prosecution; inserted (3) providing that person practicing licensed profession without license is guilty of misdemeanor, authorizing fines, imprisonment, or both, and providing that each violation constitutes separate offense; and made minor changes in style. Amendment effective October 1, 1999.

Chapter 402 inserted (4) authorizing department to issue citation and collect fine; and made minor changes in style. Amendment effective July 1, 1999.

37-1-318. Violation of injunction — penalty. A person who violates an injunction issued under 37-1-317 shall pay a civil penalty, as determined by the court, of not more than $5,000. Fifty percent of the penalty must be deposited in the general fund of the county in which the injunction is issued, and 50% must be deposited in the state general fund.

History: En. Sec. 18, Ch. 429, L. 1995.

37-1-319. Rules. A board may adopt rules:

(1) under the guidelines of 37-1-306, regarding continuing education and establishing the number of hours required each year, the methods of obtaining education, education topics, and carrying over hours to subsequent years;

(2) regarding practice limitations for temporary practice permits issued under 37-1-305 and designed to ensure adequate supervision of the practice until all qualifications for licensure are met and a license is granted;

(3) regarding qualifications for inactive license status that may require compliance with stated continuing education requirements and may limit the number of years a person may remain on inactive status without having to reestablish qualifications for licensure;

(4) regarding maintenance and safeguarding of client funds or property possessed by a licensee and requiring the funds or property to be maintained separately from the licensee's funds and property; and

(5) defining acts of unprofessional conduct, in addition to those contained in 37-1-316, that constitute a threat to public health, safety, or welfare and that are inappropriate to the practice of the profession or occupation.

History: En. Sec. 19, Ch. 429, L. 1995.

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

37-1-320 through 37-1-330 reserved.

37-1-331. Correctional health care review team. (1) There is a correctional health care review team process in the department. The purpose of a review team is to review complaints filed by an inmate against a licensed or certified provider of health care or rehabilitative services for services that were provided to the person while the person was detained or confined in a county detention center or incarcerated under legal custody of the department of corrections. The inmate may file a complaint directly with the correctional health care review team for review or, if a board receives a complaint that has not been reviewed, the board shall forward the complaint to the review team. If the review team has reason to believe that there has been a violation of this part arising out of health care or rehabilitative services provided to a person detained or confined in a county detention center, the review team shall report the possible violation to the department for appropriate action under 37-1-308.

(2) Each health care licensing board shall solicit and submit to the department a list of licensed or certified health care or rehabilitative service professionals who have correctional health care experience and who are interested in participating on a team. A current board member may not participate on a review team. The department shall solicit from the administrators of the county detention centers and from the department of corrections names of licensed or certified health care or rehabilitative service providers who have correctional health care or rehabilitative services experience and are interested in participating on a review team. Each member of a review team must have at least 2 years of experience in providing health care or rehabilitative services in a correctional facility or program.

(3) Each correctional health care review team is composed of three members who shall represent health care and rehabilitative service providers who have provided health care or rehabilitative services to incarcerated persons. Two members of the review team must be providers of the same discipline and scope of practice as the provider against whom a complaint was filed, and the third member may be a provider of any other health care or rehabilitative services discipline. The members must be willing to serve without compensation. If available, a correctional health care professional employed by the department of corrections and appointed by the director of the department of corrections may participate on the review team, except when the provider against whom the complaint was filed was employed by the department of corrections.

(4) The members of a review team are appointed by the department from the listing of health care and rehabilitative service providers with correctional experience who have been submitted by each respective board, a county detention center administrator, or the department of corrections as provided in subsection (2). A review team shall meet at least twice a year. Any travel, lodging, meal, or miscellaneous costs incurred by a review team may be recovered through a memorandum of understanding with the agencies who provide medical services to inmates or may be assessed to the licensing or certifying boards of health care and rehabilitative service providers.

(5) The review team shall review each complaint with regard to the health care or rehabilitative services provider's scope of practice. A decision on whether or not to forward the complaint must be made by the majority of the review team. The review team shall submit a written response regarding the

decision to the inmate, the county detention center administrator or the department of corrections, and the health care or rehabilitative services provider. If the decision is to not forward the complaint for action under 37-1-308, a record of the complaint may not be forwarded to any licensing or certifying board, but must be retained by the department.

History: **En. Sec. 2, Ch. 375, L. 1999.**

Compiler's Comments

Effective Date: Section 4, Ch. 375, L. 1999, provided that this section is effective July 1, 1999.

Part 4

Uniform Regulations for Licensing Programs Without Boards

37-1-401. Uniform regulation for licensing programs without boards — definitions. As used in this part, the following definitions apply:

(1) "Complaint" means a written allegation filed with the department that, if true, warrants an injunction, disciplinary action against a licensee, or denial of an application submitted by a license applicant.

(2) "Department" means the department of commerce provided for in 2-15-1801.

(3) "Investigation" means the inquiry, analysis, audit, or other pursuit of information by the department, with respect to a complaint or other information before the department, that is carried out for the purpose of determining:

(a) whether a person has violated a provision of law justifying discipline against the person;

(b) the status of compliance with a stipulation or order of the department;

(c) whether a license should be granted, denied, or conditionally issued; or

(d) whether the department should seek an injunction.

(4) "License" means permission in the form of a license, permit, endorsement, certificate, recognition, or registration granted by the state of Montana to engage in a business activity or practice at a specific level in a profession or occupation governed by Title 50, chapter 39, 74, or 76.

(5) "Profession" or "occupation" means a profession or occupation regulated by the department under the provisions of Title 50, chapter 39, 74, or 76.

History: **En. Sec. 1, Ch. 481, L. 1997.**

37-1-402. Unprofessional conduct — complaint — investigation — immunity. (1) A person, government, or private entity may submit a written complaint to the department charging a licensee or license applicant with a violation of this part and specifying the grounds for the complaint.

(2) If the department receives a written complaint or otherwise obtains information that a licensee or license applicant may have violated a requirement of this part, the department may investigate to determine whether there is reasonable cause to believe that the licensee or license applicant has committed the violation.

(3) A person or private entity, but not a government entity, filing a complaint under this section in good faith is immune from suit in a civil action related to the filing or contents of the complaint.

History: **En. Sec. 2, Ch. 481, L. 1997.**

37-1-403. Notice — request for hearing. (1) If the department determines that reasonable cause exists supporting the allegation made in a complaint, the department legal staff shall prepare a notice and serve the alleged violator. The notice may be served by certified mail to the current address on file with the department or by other means authorized by the Montana Rules of Civil Procedure.

(2) A licensee or license applicant shall give the department the licensee's or applicant's current address and any change of address within 30 days of the change.

(3) The notice must state that the licensee or license applicant may request a hearing to contest the charge or charges. A request for a hearing must be in writing and must be received in the offices of the department within 20 days after the licensee's receipt of the notice. Failure to request a hearing constitutes a default on the charge or charges, and the department may enter a decision on the basis of the facts available to it.

History: **En. Sec. 3, Ch. 481, L. 1997.**

37-1-404. Hearing — adjudicative procedures. The procedures in Title 2, chapter 4, governing adjudicative proceedings before agencies, the Montana Rules of Civil Procedure, and the Montana Rules of Evidence govern a hearing under this part. The department has all the powers and duties granted by Title 2, chapter 4.

History: **En. Sec. 4, Ch. 481, L. 1997.**

37-1-405. Findings of fact — order — report. (1) If the department finds by a preponderance of the evidence, following a hearing or on default, that a violation of this part has occurred, the department shall prepare and serve findings of fact, conclusions of law, and an order as provided in Title 2, chapter 4. If the licensee or license applicant is found not to have violated this part, the department shall prepare and serve an order of dismissal of the charges.

(2) The department may report the issuance of a notice and final order to:

(a) the person or entity who brought to the department's attention information that resulted in the initiation of the proceeding;

(b) appropriate public and private organizations that serve the profession or occupation; and

(c) the public.

History: **En. Sec. 5, Ch. 481, L. 1997.**

37-1-406. Sanctions — stay — costs — stipulations. (1) Upon a decision that a licensee or license applicant has violated this part or is unable to practice with reasonable skill and safety due to a physical or mental condition or upon stipulation of the parties as provided in subsection (4), the department may issue an order providing for one or any combination of the following sanctions:

(a) revocation of the license;

(b) suspension of the license for a fixed or indefinite term;

(c) restriction or limitation of the practice;

(d) satisfactory completion of a specific program of remedial education or treatment;

(e) monitoring of the practice by a supervisor approved by the disciplining authority;

(f) censure or reprimand, either public or private;

(g) compliance with conditions of probation for a designated period of time;

(h) payment of a fine not to exceed $1,000 for each violation;

(i) denial of a license application;

(j) refund of costs and fees billed to and collected from a consumer.

(2) Any fine collected by the department as a result of disciplinary actions must be deposited in the state general fund.

(3) A sanction may be totally or partly stayed by the department. To determine which sanctions are appropriate, the department shall first consider the sanctions that are necessary to protect or compensate the public. Only after the determination has been made may the department consider and include in the order any requirements designed to rehabilitate the licensee or license applicant.

(4) The licensee or license applicant may enter into a stipulated agreement resolving potential or pending charges that includes one or more of the sanctions in this section. The stipulation is an informal disposition for the purposes of 2-4-603.

(5) A licensee shall surrender a suspended or revoked license to the department within 24 hours after receiving notification of the suspension or revocation by mailing the license or delivering it personally to the department.

History: En. Sec. 6, Ch. 481, L. 1997.

37-1-407. Appeal. A person who is disciplined or denied a license may appeal the decision to the district court as provided in Title 2, chapter 4.

History: En. Sec. 7, Ch. 481, L. 1997.

37-1-408. Reinstatement. A licensee whose license has been suspended or revoked under this part may petition the department for reinstatement after an interval set by the department in the order. The department may hold a hearing on the petition and may deny the petition or order reinstatement and impose terms and conditions as provided in 37-1-312. The department may require the successful completion of an examination as a condition of reinstatement and may treat a licensee whose license has been revoked or suspended as a new applicant for purposes of establishing the requisite qualifications of licensure.

History: En. Sec. 8, Ch. 481, L. 1997.

37-1-409. Enforcement of fine. (1) If payment of a fine is included in an order and timely payment is not made as directed in the order, the department may enforce the order for payment in the district court of the first judicial district.

(2) In a proceeding for enforcement of an order of payment of a fine, the order is conclusive proof of the validity of the order of payment and the terms of payment.

History: En. Sec. 9, Ch. 481, L. 1997.

37-1-410. Unprofessional conduct. The following is unprofessional conduct for a licensee or license applicant governed by this chapter:

(1) being convicted, including a conviction following a plea of nolo contendere and regardless of a pending appeal, of a crime relating to or committed during the course of practicing the person's profession or occupation or involving violence, the use or sale of drugs, fraud, deceit, or theft;

(2) permitting, aiding, abetting, or conspiring with a person to violate or circumvent a law relating to licensure or certification;

(3) fraud, misrepresentation, deception, or concealment of a material fact in applying for or assisting in securing a license or license renewal or in taking an examination required for licensure;

(4) signing or issuing, in the licensee's professional capacity, a document or statement that the licensee knows or reasonably ought to know contains a false or misleading statement;

(5) making a misleading, deceptive, false, or fraudulent advertisement or other representation in the conduct of the profession or occupation;

(6) offering, giving, or promising anything of value or benefit to a federal, state, or local government employee or official for the purpose of influencing the employee or official to circumvent a federal, state, or local law, rule, or ordinance governing the licensee's profession or occupation;

(7) the denial, suspension, revocation, probation, fine, or other license restriction or discipline against a licensee by a state, province, territory, or Indian tribal government or the federal government if the action is not on appeal or under judicial review or has been satisfied.

(8) failure to comply with a term, condition, or limitation of a license by final order of the department;

(9) having a physical or mental disability that renders the licensee or license applicant unable to practice the profession or occupation with reasonable skill and safety;

(10) misappropriating property or funds from a client or workplace or failing to comply with the department's rule regarding the accounting and distribution of a client's property or funds;

(11) interference with an investigation or disciplinary proceeding by willful misrepresentation of facts, failure to respond to department inquiries regarding a complaint against the licensee or license applicant, or the use of threats or harassment against or inducement to a client or witness to prevent them from providing evidence in a disciplinary proceeding or other legal action or use of threats or harassment against or inducement to a person to prevent or attempt to prevent a disciplinary proceeding or other legal action from being filed, prosecuted, or completed;

(12) assisting in the unlicensed practice of a profession or occupation or allowing another person or organization to practice or offer to practice the profession or occupation by use of the licensee's license.

History: En. Sec. 10, Ch. 481, L. 1997.

37-1-411. Practice without license — investigation of complaint — injunction — penalties. (1) The department may investigate a complaint or other information received concerning practice by an unlicensed person of a profession or occupation governed by this part.

(2) The department may file an action to enjoin a person from practicing, without a license, a profession or occupation governed by this part.

History: En. Sec. 11, Ch. 481, L. 1997; amd. Sec. 5, Ch. 230, L. 1999.

Compiler's Comments

1999 Amendment: Chapter 230 in middle of (1) after "complaint" inserted "or other information received". Amendment effective October 1, 1999.

37-1-412. Violation of injunction — penalty. (1) A person who has been enjoined and who violates an injunction issued pursuant to a proceeding under this part may be held in contempt of court and shall pay a civil penalty, as determined by the court, of not more that $5,000. Fifty percent of the penalty must be deposited in the general fund of the county in which the injunction is issued, and 50% must be deposited in the state general fund.

(2) A person subject to an injunction for practicing without a license may also be subject to criminal prosecution. In a complaint for an injunction or in an affidavit, information, or indictment alleging that a person has engaged in unlicensed practice, it is sufficient to charge that the person engaged in the unlicensed practice of a licensed profession or occupation on a certain day in a certain county without averring further or more particular facts concerning the violation.

(3) Unless otherwise provided by statute, a person practicing a licensed profession or occupation in this state without complying with the licensing provisions of this title is guilty of a misdemeanor punishable by a fine of not less than $250 or more than $1,000, imprisonment in the county jail for not less than 90 days or more than 1 year, or both. Each violation of the provisions of this chapter constitutes a separate offense.

History: En. Sec. 12, Ch. 481, L. 1997; amd. Sec. 6, Ch. 230, L. 1999.

Compiler's Comments

1999 Amendment: Chapter 230 at beginning of (1) after "who" inserted "has been enjoined and who" and after "part" inserted "may be held in contempt of court and"; inserted (2) providing that person subject to injunction for practicing without license is subject to criminal prosecution; inserted (3) providing that person practicing licensed profession without license is guilty of misdemeanor, authorizing fines, imprisonment, or both, and providing that each violation constitutes separate offense; and made minor changes in style. Amendment effective October 1, 1999.

37-1-413. Department authority. For each licensing program regulated by the department under this part, the department is designated as a criminal justice agency within the meaning of 44-5-103 for the purpose of obtaining confidential criminal justice information regarding licensees and license applicants and regarding possible unlicensed practice.

History: En. Sec. 4, Ch. 230, L. 1999.

Compiler's Comments

Effective Date: Section 24(1), Ch. 230, L. 1999, provided that this section is effective October 1, 1999.

CHAPTER 2

GENERAL PROVISIONS RELATING TO HEALTH CARE PRACTITIONERS

Part 1 — Dispensing of Drugs

37-2-101. Definitions.
37-2-102. Practices declared unlawful between drug companies and medical practitioners.
37-2-103. Practices declared unlawful between medical practitioners and pharmacies.

37-2-104. Dispensing of drugs by medical practitioners unlawful — exceptions.
37-2-105. Duty of county attorneys.
37-2-106. Existing ownership of pharmacy.
37-2-107 through 37-2-110 reserved.
37-2-111. Duty to report prescriptions issued to drug addicts.

Part 2 — Nonliability for Peer Review

37-2-201. Nonliability — evidential privilege — application to nonprofit corporations.

Part 3 — Miscellaneous Provisions

37-2-301. Duty to report cases of communicable disease.
37-2-302. Gunshot or stab wounds to be reported.
37-2-303. Immunity from liability.
37-2-304 through 37-2-310 reserved.
37-2-311. Report to department of justice by physician.
37-2-312. Physician's immunity from liability.

Part 1
Dispensing of Drugs

Part Cross-References

Pharmacy, Title 37, ch. 7.

Dangerous drugs, Title 45, ch. 9.

Model Drug Paraphernalia Act, Title 45, ch. 10.

Controlled substances, Title 50, ch. 32.

37-2-101. Definitions. As used in this part, the following definitions apply:

(1) "Community pharmacy", when used in relation to a medical practitioner, means a pharmacy situated within 10 miles of any place at which the medical practitioner maintains an office for professional practice.

(2) "Device" means any instrument, apparatus, or contrivance intended:

(a) for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in man;

(b) to affect the structure or any function of the body of man.

(3) "Drug" means any article:

(a) recognized in the official United States Pharmacopoeia/National Formulary or in any supplement to the pharmacopoeia/formulary;

(b) intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in man;

(c) intended to affect the structure or any function of the body of man;

(d) intended for use as a component of any article described in subsection (a), (b), or (c) of this subsection (3), but the term does not include any device or any components of a device.

(4) "Drug company" means any person engaged in the manufacturing, processing, packaging, or distribution of drugs; but the term does not include a pharmacy.

(5) "Medical practitioner" means any person licensed by the state of Montana to engage in the practice of medicine, dentistry, osteopathy, podiatry, optometry, or a nursing specialty as described in 37-8-202(5) and in the licensed practice to administer or prescribe drugs.

(6) "Person" means any individual and any partnership, firm, corporation, association, or other business entity.

(7) "Pharmacy" means an establishment which engages in the sale of drugs requiring a prescription.

(8) "State" means the state of Montana or any political subdivision thereof.

History: En. Sec. 1, Ch. 311, L. 1971; R.C.M. 1947, 27-901; amd. Sec. 2, Ch. 379, L. 1981; amd. Sec. 1, Ch. 588, L. 1987; amd. Sec. 43, Ch. 83, L. 1989; amd. Sec. 1, Ch. 444, L. 1989.

37-2-102. Practices declared unlawful between drug companies and medical practitioners. It shall be unlawful:

(1) for a drug company to give or sell to a medical practitioner any legal or beneficial interest in the company or in the income thereof with the intent or for the purpose of inducing such medical practitioner to prescribe to his patients the drugs of the company. The giving or selling of such interest by the company to a medical practitioner without such interest first having been publicly offered to the general public shall be prima facie evidence of such intent or purpose.

(2) for a medical practitioner to acquire or own a legal or beneficial interest in any drug company, provided it shall not be unlawful for a medical practitioner to acquire or own such an interest solely for investment; and the acquisition of an interest which is publicly offered to the general public shall be prima facie evidence of its acquisition solely for investment;

(3) for a medical practitioner to solicit or to knowingly receive from a drug company or for a drug company to pay or to promise to pay to a medical practitioner any rebate, refund, discount, commission, or other valuable consideration for, on account of, or based upon the volume of wholesale or retail sales, at any place, of drugs manufactured, processed, packaged, or distributed by the company.

History: En. Sec. 2, Ch. 311, L. 1971; R.C.M. 1947, 27-902.

37-2-103. Practices declared unlawful between medical practitioners and pharmacies. (1) It shall be unlawful for a medical practitioner to own, directly or indirectly, a community pharmacy. Nothing in this subsection shall prohibit a medical practitioner from dispensing a drug which he is permitted to dispense under 37-2-104.

(2) It shall be unlawful for a medical practitioner directly or indirectly to solicit or to knowingly receive from a community pharmacy or for a community pharmacy knowingly to pay or promise to pay to a medical practitioner any rebate, refund, discount, commission, or other valuable consideration for, on account of, or based upon income received or resulting from the sale or furnishing by such community pharmacy of drugs to patients of any medical practitioner.

History: En. Sec. 4, Ch. 311, L. 1971; R.C.M. 1947, 27-904.

37-2-104. Dispensing of drugs by medical practitioners unlawful — exceptions. (1) Except as otherwise provided by this section, it is unlawful for a medical practitioner to engage, directly or indirectly, in the dispensing of drugs.

(2) This section does not prohibit:

(a) a medical practitioner from furnishing a patient any drug in an emergency;

(b) the administration of a unit dose of a drug to a patient by or under the supervision of a medical practitioner;

(c) dispensing a drug to a patient by a medical practitioner whenever there is no community pharmacy available to the patient;

(d) the dispensing of drugs occasionally, but not as a usual course of doing business, by a medical practitioner;

(e) a medical practitioner from dispensing drug samples;

(f) the dispensing of factory prepackaged oral contraceptives by a registered nurse employed by a family planning clinic under contract with the department of public health and human services if the dispensing is in accordance with:

(i) a physician's written protocol specifying the circumstances under which dispensing is appropriate; and

(ii) the drug labeling, storage, and recordkeeping requirements of the board of pharmacy;

(g) a contract physician at an urban Indian clinic from dispensing drugs to qualified patients of the clinic. The clinic may not stock or dispense any dangerous drug, as defined in 50-32-101, or any controlled substance. The contract physician may not delegate the authority to dispense any drug for which a prescription is required under 21 U.S.C. 353(b).

History: En. Sec. 3, Ch. 311, L. 1971; R.C.M. 1947, 27-903; amd. Sec. 1, Ch. 22, L. 1979; amd. Sec. 1, Ch. 472, L. 1989; amd. Sec. 1, Ch. 445, L. 1991; amd. Sec. 57, Ch. 418, L. 1995; amd. Sec. 86, Ch. 546, L. 1995.

37-2-105. Duty of county attorneys. It shall be the duty of the county attorneys in the counties of the state, under the direction of the attorney general, to institute appropriate proceedings to prevent and restrain such violations. Such proceedings may be by way of complaint setting forth the case and praying that such violation shall be enjoined or otherwise prohibited. Upon the filing of a complaint under this section and the service thereof upon the defendants named therein, the court shall proceed as soon as possible to the hearing and determination of the action.

History: En. Sec. 5, Ch. 311, L. 1971; R.C.M. 1947, 27-905.

Cross-References

Duty of Attorney General to supervise County Attorneys, 2-15-501.

Duties of County Attorneys generally, Title 7, ch. 4, part 27.

Injunctions, Rule 65, M.R.Civ.P. (see Title 25, ch. 20).

Injunctions generally, Title 27, ch. 19.

37-2-106. Existing ownership of pharmacy. The provisions of 37-2-103(1) shall not apply to a medical practitioner as to any interest which he owns as set forth in said subsection on July 1, 1971, provided that transfer of this interest to another person shall result in immediate termination of such exemption.

History: En. Sec. 6, Ch. 311, L. 1971; R.C.M. 1947, 27-906.

Cross-References

Store license for pharmacy, 37-7-321.

37-2-107 through 37-2-110 reserved.

37-2-111. Duty to report prescriptions issued to drug addicts. (1) A physician duly licensed to practice medicine in Montana who prescribes for or dispenses, administers, or in any manner gives opium or coca leaves or any of their derivatives, salts, preparations, or compounds to a person known to him or believed by him to be an habitual user or a drug addict shall, within 48 hours, report the name, address, physical and mental condition, and any necessary substantial information regarding such person to the county attorney of the county in which that physician prescribes, dispenses, administers, or in any manner gives any of the drugs mentioned in this section.

(2) An "habitual user of drugs" or "drug addict" is defined as follows: a person who has needed or demanded the prescribing, dispensing, or administering or in any manner the giving of opium or coca leaves or any of their derivatives, salts, preparations, or compounds at more or less regular intervals for 30 consecutive days prior to the day that person applies to a physician for the prescribing, dispensing, administering, or the giving in any way of any such drugs or their derivatives.

(3) If a physician prescribes for or dispenses, administers, or in any manner gives any of the drugs mentioned in this section daily for more than 30 days to a person, that physician shall register with the county attorney the name of such person, together with a statement of the physical and mental condition of such person and a prognosis as to the probable future necessity for continuing to prescribe for, dispense, administer, or give such drugs to such person, and the prognosis shall include an estimate as to the length of time which, according to the judgment of the physician, will be required to remove the necessity of administering the aforesaid narcotic drugs to such person.

(4) The county attorney shall, upon receipt of such notice, immediately file a complaint against such habitual user of drugs or drug addict in the district court of his county.

(5) A person violating any of the provisions of this section is guilty of a misdemeanor and upon conviction for each violation shall be sentenced to a term of imprisonment not to exceed 6 months in the county jail, a fine not to exceed $500, or both.

History: En. Sec. 6, Ch. 202, L. 1921; re-en. Sec. 3194, R.C.M. 1921; re-en. Sec. 3194, R.C.M. 1935; amd. Sec. 8, Ch. 101, L. 1977; R.C.M. 1947, 66-1516.

Part 2

Nonliability for Peer Review

Part Cross-References

Libel and slander, Title 27, ch. 1, part 8.

Montana Medical Legal Panel created, 27-6-104.

Licensing investigation and review — record access, 37-1-135.

Reporting obligations of physicians, Title 37, ch. 3, part 4.

Health care information, Title 50, ch. 16.

37-2-201. Nonliability — evidential privilege — application to nonprofit corporations. (1) No member of a utilization review or medical ethics review committee of a hospital or long-term care facility or of a professional utilization committee, peer review committee, medical ethics review committee, or professional standards review committee of a society composed of persons licensed to practice a health care profession is liable in damages to any person for any action taken or recommendation made within the scope of the functions of the committee if the committee member acts without malice and in the reasonable belief that the action or recommendation is warranted by the facts known to him after reasonable effort to obtain the facts of the matter for which the action is taken or a recommendation is made.

(2) The proceedings and records of professional utilization, peer review, medical ethics review, and professional standards review committees are not subject to discovery or introduction into evidence in any proceeding. However, information otherwise discoverable or admissible from an original source is not to be construed as immune from discovery or use in any proceeding merely because it was presented during proceedings before the committee, nor is a member of the committee or other person appearing before it to be prevented from testifying as to matters within his knowledge, but he cannot be questioned about his testimony or other proceedings before the committee or about opinions or other actions of the committee or any member thereof.

(3) This section also applies to any member, agent, or employee of a nonprofit corporation engaged in performing the functions of a peer review, medical ethics review, or professional standards review committee.

History: En. 66-1052 by Sec. 1, Ch. 226, L. 1975; amd. Sec. 1, Ch. 267, L. 1977; R.C.M. 1947, 66-1052; amd. Sec. 2, Ch. 22, L. 1979; amd. Sec. 1, Ch. 380, L. 1989.

Part 3
Miscellaneous Provisions

Part Cross-References

Doctor-patient privilege, 26-1-805.

Libel and slander, Title 27, ch. 1, part 8.

Report of fetal death that occurs outside licensed medical facility, 46-4-114.

Communicable disease defined, 50-1-101.

Powers of Department relating to communicable diseases, 50-1-202.

Report of exposure to infectious disease, Title 50, ch. 16, part 7.

Report of exposure to infectious disease — immunity from liability, 50-16-704.

Revocation, suspension, or cancellation of driver's license, Title 61, ch. 5, part 2.

37-2-301. Duty to report cases of communicable disease. (1) If a physician or other practitioner of the healing arts examines or treats a person who the physician or other practitioner believes has a communicable disease or a disease declared reportable by the department of public health and human services, the physician or other practitioner shall immediately report the case to the local health officer. The report must be in the form and contain the information prescribed by the department.

(2) A person who violates the provisions of this section or rules adopted by the department under the provisions of this section is guilty of a misdemeanor. On conviction, the person shall be fined not less than $10 or more than $500, imprisoned for not more than 90 days, or both. Each day of violation constitutes a separate offense. Fines, except those collected by a justice's court, must be paid to the county treasurer of the county in which the violation occurs.

History: (1)En. Sec. 91, Ch. 197, L. 1967; Sec. 69-4514, R.C.M. 1947; (2)En. Sec. 96, Ch. 197, L. 1967; amd. Sec. 108, Ch. 349, L. 1974; amd. Sec. 3, Ch. 273, L. 1975; Sec. 69-4519, R.C.M. 1947; R.C.M. 1947, 69-4514, 69-4519(part); amd. Sec. 21, Ch. 557, L. 1987; amd. Sec. 58, Ch. 418, L. 1995; amd. Sec. 87, Ch. 546, L. 1995.

Cross-References

Collection and disposition of fines, penalties, forfeitures, and fees, 3-10-601.

37-2-302. Gunshot or stab wounds to be reported. The physician, nurse, or other person licensed to practice a health care profession treating the victim of a gunshot wound or stabbing shall make a report to a law enforcement officer by the fastest possible means. Within 24 hours after initial treatment or first observation of the wound, a written report shall be submitted, including the name and address of the victim, if known, and shall be sent by regular mail.

History: En. 66-1050 by Sec. 1, Ch. 303, L. 1974; R.C.M. 1947, 66-1050.

37-2-303. Immunity from liability. A physician or other person reporting pursuant to 37-2-302 shall be presumed to be acting in good faith and in so doing shall be immune from any liability, civil or criminal, unless he acted in bad faith or with malicious purpose.

History: En. 66-1051 by Sec. 2, Ch. 303, L. 1974; R.C.M. 1947, 66-1051.

37-2-304 through 37-2-310 reserved.

37-2-311. Report to department of justice by physician. (1) Any physician who diagnoses a physical or mental condition that, in the physician's judgment, will significantly impair a person's ability to safely operate a motor vehicle may voluntarily report the person's name and other information relevant to his condition to the department of justice. The department, upon receiving the report, shall require the person so reported to be examined or investigated as provided for in 61-5-207.

(2) (a) The physician's report may be introduced as evidence in any proceeding involving the granting, suspension, or revocation of the person's driver's license, driving privilege, or commercial driver's license before the department or a court.

(b) The physician's report may not be utilized in a criminal proceeding or in a civil proceeding, other than as provided in this subsection, without the consent of the patient.

History: En. Sec. 1, Ch. 126, L. 1983; amd. Sec. 1, Ch. 419, L. 1991.

37-2-312. Physician's immunity from liability. Any physician reporting in good faith is immune from any liability, civil or criminal, that otherwise might result by reason of his actions pursuant to 37-2-311 except for damages occasioned by gross negligence. No action may be brought against a physician for not making a report pursuant to 37-2-311.

History: En. Sec. 2, Ch. 126, L. 1983.

CHAPTER 3

MEDICINE

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Chapter Cross-References

Doctor-patient privilege, 26-1-805.

Limits on liability for emergency care rendered at scene of accident or emergency, 27-1-714.

Limits on liability of health care provider in emergency situations, 27-1-734.

Liability of mental health professionals, Title 27, ch. 1, part 11.

Duty to warn of violent behavior, 27-1-1102.

Montana Medical Legal Panel Act, Title 27, ch. 6.

Professional service corporations, Title 35, ch. 4.

General provisions relating to health care practitioners, Title 37, ch. 2.

Limitations on dentistry and oral surgery practices involving general anesthesia, 37-4-511.

Regulation of prescriptions, Title 37, ch. 7, part 4.

Optometry laws not applicable to physicians and surgeons, 37-10-102.

Physician assistants-certified, Title 37, ch. 20.

Validity of consent to medical treatment, Title 41, ch. 1, part 4.

Child abuse and neglect — reports and investigations, Title 41, ch. 3, part 2.

Child abuse and neglect — duty to report — penalty, 41-3-201, 41-3-207.

Hospitals and related facilities, Title 50, ch. 5.

Family practice residency training, Title 50, ch. 5, part 6.

Emergency medical services, Title 50, ch. 6.

Health care information, Title 50, ch. 16.

Montana Abortion Control Act, Title 50, ch. 20.

Abuse or neglect of elderly or persons with developmental disabilities — duty to report, 52-3-811.

Part 1

General

37-3-101. Purpose. It is hereby declared, as a matter of legislative policy in the state of Montana, that the practice of medicine within the state of Montana is a privilege granted by the legislative authority and is not a natural right of individuals and that it is deemed necessary, as a matter of such policy and in the interests of the health, happiness, safety, and welfare of the people of Montana, to provide laws and provisions covering the granting of that privilege and its subsequent use, control, and regulation to the end that the public shall be properly protected against unprofessional, improper, unauthorized, and unqualified practice of medicine and to license competent physicians to practice medicine and thereby provide for the health needs of the people of Montana.

History: En. Sec. 2, Ch. 338, L. 1969; R.C.M. 1947, 66-1011.

37-3-102. Definitions. Unless the context requires otherwise, in this chapter, the following definitions apply:

(1) An "approved internship" is an internship training program of at least 1 year in a hospital which is either approved for intern training by the American osteopathic association or conforms to the minimum standards for intern training established by the council on medical education of the American medical association or successors. However, the board shall have the authority, upon investigation, to approve any other internship.

(2) An "approved medical school" is a school which either is accredited by the American osteopathic association or conforms to the minimum education standards established by the council on medical education of the American medical association or successors for medical schools or is equivalent in the sound discretion of the board. The board may, on investigation of the education standards and facilities, approve any medical school, including foreign medical schools.

(3) An "approved residency" is a residency training program in a hospital conforming to the minimum standards for residency training established by the council on medical education of the American medical association or

successors or approved for residency training by the American osteopathic association. However, the board shall have the authority upon investigation to approve any other residency.

(4) "Board" means the Montana state board of medical examiners provided for in 2-15-1841.

(5) "Department" means the department of commerce provided for in Title 2, chapter 15, part 18.

(6) "Practice of medicine" means the diagnosis, treatment, or correction of or the attempt to or the holding of oneself out as being able to diagnose, treat, or correct human conditions, ailments, diseases, injuries, or infirmities, whether physical or mental, by any means, methods, devices, or instrumentalities. If a person who does not possess a license to practice medicine in this state under this chapter and who is not exempt from the licensing requirements of this chapter performs acts constituting the practice of medicine, he is practicing medicine in violation of this chapter.

History: (1)En. Sec. 3, Ch. 338, L. 1969; amd. Sec. 1, Ch. 203, L. 1971; amd. Sec. 1, Ch. 97, L. 1974; amd. Sec. 91, Ch. 350, L. 1974; Sec. 66-1012, R.C.M. 1947; (2)En. Sec. 19, Ch. 338, L. 1969; amd. Sec. 5, Ch. 203, L. 1971; amd. Sec. 102, Ch. 350, L. 1974; Sec. 66-1028, R.C.M. 1947; (3)En. Sec. 20, Ch. 338, L. 1969; amd. Sec. 6, Ch. 203, L. 1971; Sec. 66-1029, R.C.M. 1947; (4)En. Sec. 21, Ch. 338, L. 1969; amd. Sec. 7, Ch. 203, L. 1971; Sec. 66-1030, R.C.M. 1947; R.C.M. 1947, 66-1012(1), 66-1028, 66-1029, 66-1030(part); amd. Sec. 3, Ch. 274, L. 1981.

37-3-103. Exemptions from licensing requirements. (1) This chapter does not prohibit or require a license with respect to any of the following acts:

(a) the gratuitous rendering of services in cases of emergency or catastrophe;

(b) the rendering of services in this state by a physician lawfully practicing medicine in another state or territory. However, if the physician does not limit the services to an occasional case or if the physician has any established or regularly used hospital connections in this state or maintains or is provided with, for the physician's regular use, an office or other place for rendering the services, the physician must possess a license to practice medicine in this state.

(c) the practice of dentistry under the conditions and limitations defined by the laws of this state;

(d) the practice of podiatry under the conditions and limitations defined by the laws of this state;

(e) the practice of optometry under the conditions and limitations defined by the laws of this state;

(f) the practice of osteopathy under the conditions and limitations defined in chapter 5 of this title for those doctors of osteopathy who do not receive a physician's certificate under this chapter;

(g) the practice of chiropractic under the conditions and limitations defined by the laws of this state;

(h) the practice of Christian Science, with or without compensation, and ritual circumcisions by rabbis;

(i) the performance by commissioned medical officers of the armed forces of the United States, of the United States public health service, or of the United States department of veterans affairs of their lawful duties in this state as officers;

(j) the rendering of nursing services by registered or other nurses in the lawful discharge of their duties as nurses or of midwife services by registered nurse-midwives under the supervision of a licensed physician;

(k) the rendering of services by interns or resident physicians in a hospital or clinic in which they are training, subject to the conditions and limitations of this chapter. The board may require a resident physician to be licensed if the physician otherwise engages in the practice of medicine in the state of Montana.

(l) the rendering of services by a physical therapist, technician, or other paramedical specialist under the appropriate amount and type of supervision of a person licensed under the laws of this state to practice medicine, but this exemption does not extend the scope of a paramedical specialist;

(m) the rendering of services by a physician assistant-certified in accordance with Title 37, chapter 20;

(n) the practice by persons licensed under the laws of this state to practice a limited field of the healing arts, and not specifically designated, under the conditions and limitations defined by law;

(o) the execution of a death sentence pursuant to 46-19-103;

(p) the practice of direct-entry midwifery. For the purpose of this section, the practice of direct-entry midwifery means the advising, attending, or assisting of a woman during pregnancy, labor, natural childbirth, or the postpartum period. Except as authorized in 37-27-302, a direct-entry midwife may not dispense or administer a prescription drug, as those terms are defined in 37-7-101.

(q) the use of an automated external defibrillator pursuant to Title 50, chapter 6, part 5.

(2) Licensees referred to in subsection (1) who are licensed to practice a limited field of healing arts shall confine themselves to the field for which they are licensed or registered and to the scope of their respective licenses and, with the exception of those licensees who hold a medical degree, may not use the title "M.D." or any word or abbreviation to indicate or to induce others to believe that they are engaged in the diagnosis or treatment of persons afflicted with disease, injury, or defect of body or mind except to the extent and under the conditions expressly provided by the law under which they are licensed.

History: Ap. p. Sec. 3, Ch. 338, L. 1969; amd. Sec. 1, Ch. 203, L. 1971; amd. Sec. 1, Ch. 97, L. 1974; amd. Sec. 91, Ch. 350, L. 1974; Sec. 66-1012, R.C.M. 1947; Ap. p. Sec. 21, Ch. 338, L. 1969; amd. Sec. 7, Ch. 203, L. 1971; Sec. 66-1030, R.C.M. 1947; R.C.M. 1947, 66-1012(2), (3), 66-1030(part); amd. Sec. 7, Ch. 380, L. 1981; amd. Sec. 1, Ch. 411, L. 1983; amd. Sec. 8, Ch. 97, L. 1989; amd. Sec. 3, Ch. 493, L. 1989; amd. Sec. 25, Ch. 550, L. 1991; amd. Sec. 1, Ch. 335, L. 1999.

Compiler's Comments

1999 Amendment: Chapter 335 inserted (1)(q) exempting from licensing use of a defibrillator pursuant to Title 50, chapter 6, part 5; and made minor changes in style. Amendment effective July 1, 1999.

Cross-References

Dentistry and dental hygiene, Title 37, ch. 4.

Osteopathy, Title 37, ch. 5.

Podiatry, Title 37, ch. 6.

Nursing, Title 37, ch. 8.

Optometry, Title 37, ch. 10.

Physical therapy, Title 37, ch. 11.

Chiropractic, Title 37, ch. 12.

Physician assistant-certified defined, 37-20-401.

Part 2

Board of Medical Examiners

Part Cross-References

Right to know, Art. II, sec. 9, Mont. Const.

Open meetings, Title 2, ch. 3, part 2.

Meeting defined, 2-3-202.

Adoption and publication of rules, Title 2, ch. 4, part 3.

Allocation of boards for administrative purposes, 2-15-121.

Quasi-judicial boards, 2-15-124.

Board established, 2-15-1841.

Prosecutorial duties of County Attorney, 7-4-2712.

Duties of County Attorney relating to state matters, 7-4-2716.

Duties of Department, Director, and boards, Title 37, ch. 1, part 1.

Duty of Department to provide facilities, 37-1-101.

Board members' compensation and expenses, 37-1-133.

Effect of chemical dependency, 37-3-323.

Approval of class for optometric use of drugs, 37-10-304.

Transfer of funds derived from licensure of physical therapists, 37-11-203.

Power to regulate acupuncture, Title 37, ch. 13, part 2.

Disrupting meeting as disorderly conduct, 45-8-101.

37-3-201. Organization. The board shall, at the first meeting each year, elect from among its members a president, vice-president, and secretary. The board shall adopt a seal in which appear the words "The Board of Medical Examiners of Montana" and the further words "Official Seal", and acts, rules, orders, certificates, and licenses shall be authenticated by the seal.

History: En. Sec. 6, Ch. 338, L. 1969; amd. Sec. 93, Ch. 350, L. 1974; R.C.M. 1947, 66-1015.

37-3-202. Policy. The board shall maintain reasonable and continuing supervision and surveillance over all licensees under this chapter to ensure that such licensees maintain standards of conduct and exercise the privileges granted hereunder in the greatest public interest and to carry out the purposes and provisions of this chapter.

History: En. Sec. 7, Ch. 338, L. 1969; R.C.M. 1947, 66-1016.

37-3-203. Powers and duties. The board may:

(1) adopt rules necessary or proper to carry out parts 1 through 3 of this chapter. The rules must be fair, impartial, and nondiscriminatory.

(2) hold hearings and take evidence in matters relating to the exercise and performance of the powers and duties vested in the board;

(3) aid the county attorneys of this state in the enforcement of parts 1 through 3 of this chapter and the prosecution of persons, firms, associations, or corporations charged with violations of parts 1 through 3 of this chapter;

(4) establish a program to assist and rehabilitate licensed physicians who are found to be physically or mentally impaired by habitual intemperance or the excessive use of addictive drugs, alcohol, or any other drug or substance or by mental or chronic physical illness;

(5) select an executive secretary to be hired by the department to:

(a) provide services to the board in connection with the board's duties under this chapter;

(b) assist in prosecution and matters of license discipline under this chapter; and

(c) administer the board's affairs; and

(6) fund additional staff, hired by the department, to administer the provisions of this chapter, by increasing license fees as necessary.

History: En. Sec. 8, Ch. 338, L. 1969; amd. Sec. 94, Ch. 350, L. 1974; R.C.M. 1947, 66-1017; amd. Sec. 1, Ch. 83, L. 1981; amd. Sec. 1, Ch. 283, L. 1987; amd. Sec. 1, Ch. 135, L. 1989; amd. Sec. 1, Ch. 436, L. 1991; amd. Sec. 2, Ch. 419, L. 1993.

37-3-204. Meetings. The board shall hold meetings for examinations and for other business properly before the board at least twice annually at times and places set by the board. The president of the board may call special meetings he considers advisable or necessary. Four members of the board constitute a quorum.

History: En. Sec. 9, Ch. 338, L. 1969; amd. Sec. 95, Ch. 350, L. 1974; R.C.M. 1947, 66-1018.

37-3-205. Records. The department shall keep a record of the board's proceedings and also records of applicants for certificates and a register of licenses. The register is prima facie evidence of the matters contained in it.

History: En. Sec. 10, Ch. 338, L. 1969; amd. Sec. 96, Ch. 350, L. 1974; R.C.M. 1947, 66-1019.

37-3-206. Compensation and expenses of members. Each member of the board of medical examiners shall receive compensation and travel expenses as provided for in 37-1-133.

History: En. Sec. 11, Ch. 338, L. 1969; amd. Sec. 1, Ch. 165, L. 1974; amd. Sec. 97, Ch. 350, L. 1974; amd. Sec. 30, Ch. 439, L. 1975; R.C.M. 1947, 66-1020; amd. Sec. 7, Ch. 474, L. 1981.

37-3-207 through 37-3-210 reserved.

37-3-211. Executive secretary. To perform the services provided for in 37-3-203(5), the department shall hire a person selected by the board who:

(1) is a citizen of the United States;

(2) is of good moral character; and

(3) holds at least a postgraduate degree from an accredited college or university or has equivalent experience. The degree or experience need not be in the field of medicine.

History: En. Sec. 2, Ch. 135, L. 1989.

Part 3

Licensing and Utilization Plans

Part Cross-References

Oath defined, 1-1-201.

Proof of execution, Title 1, ch. 5, part 3.

Power of notary to take acknowledgments, 1-5-416.

Oaths, Title 1, ch. 6.

Licensing to follow contested case procedure, 2-4-631.

Suspension of license fees for persons in military service, 10-1-605.

Recognition of out-of-state licenses during disaster or emergency, 10-3-204.

Affidavits, Title 26, ch. 1, part 10.

Surcharge for pretrial review fund, 27-6-206.

Duty of Department to administer and grade examinations, 37-1-101.

Standardized forms, 37-1-104.

Reporting disciplinary actions against licensees, 37-1-105.

Duty of Board to adopt and enforce licensing and certification rules, 37-1-131.

Licensing boards to establish fees commensurate with costs, 37-1-134.

Licensure of criminal offenders, Title 37, ch. 1, part 2.

Licensing of doctors of osteopathy, Title 37, ch. 5, part 3.

Perjury, 45-7-201.

False swearing, 45-7-202.

Nondiscrimination in licensing, 49-3-204.

37-3-301. *(Temporary)* **License required — kinds of certificates.** (1) Before being issued a license, an applicant may not engage in the practice of medicine in this state.

(2) The department may issue three forms of certificates of licensure under the board's seal: the physician's certificate, the restricted certificate, and the temporary certificate. The physician's certificate and the restricted certificate must be signed by the president, but the temporary certificate may be signed by any board member. The board shall decide which certificate to issue. These certificates must be designated as:

(a) physician's certificate, which is subject to renewable registration in accordance with department rules;

(b) restricted certificate; and

(c) temporary certificate, which is subject to specifications and limitations imposed by the board.

37-3-301. *(Effective October 1, 2000)* **License required — kinds of certificates.** (1) Before being issued a license, an applicant may not engage in the practice of medicine in this state.

(2) The department may issue four forms of certificates of licensure under the board's seal: the physician's certificate, the restricted certificate, the temporary certificate, and the telemedicine certificate issued in accordance with 37-3-341 through 37-3-349. The physician's certificate and the restricted certificate must be signed by the president, but the temporary certificate may be signed by any board member. The board shall decide which certificate to issue. These certificates must be designated as:

(a) physician's certificate, which is subject to renewable registration in accordance with department rules;

(b) restricted certificate;

(c) temporary certificate, which is subject to specifications and limitations imposed by the board; and

(d) telemedicine certificate.

History: (1)En. Sec. 25, Ch. 338, L. 1969; amd. Sec. 105, Ch. 350, L. 1974; Sec. 66-1034, R.C.M. 1947; (2)En. Sec. 12, Ch. 338, L. 1969; amd. Sec. 98, Ch. 350, L. 1974; Sec. 66-1021, R.C.M. 1947; R.C.M. 1947, 66-1021, 66-1034(part); amd. Sec. 1, Ch. 145, L. 1995; amd. Sec. 4, Ch. 492, L. 1997; amd. Sec. 10, Ch. 371, L. 1999.

Compiler's Comments

1999 Amendment: Chapter 371 in (2) near beginning substituted "four forms" for "three forms" and inserted "and the telemedicine certificate issued in accordance with 37-3-341 through 37-3-349"; inserted (2)(d) concerning a telemedicine certificate; and made minor changes in style. Amendment effective October 1, 2000.

37-3-302. Certificate to specify practice permitted. The certificates issued shall state the extent and character of the practice that is permitted and shall be in the form prescribed by the board. Neither the privileges granted to nor the obligations imposed upon licensees may be altered except by legislative enactment or by action of the board duly authorized hereunder.

History: En. Sec. 13, Ch. 338, L. 1969; R.C.M. 1947, 66-1022.

37-3-303. Practice authorized by physician's certificate. The physician's certificate authorizes the holder to perform one or more of the acts embraced in 37-3-102(6) in a manner reasonably consistent with his training, skill, and experience.

History: En. Sec. 14, Ch. 338, L. 1969; amd. Sec. 3, Ch. 203, L. 1971; R.C.M. 1947, 66-1023; amd. Sec. 1, Ch. 323, L. 1979.

37-3-304. Practice authorized by temporary certificate. The temporary certificate, which may be issued to any citizen or to an alien otherwise qualified for a physician's certificate and which may be issued for a period not to exceed 1 year, subject to renewal for additional periods of 1 year but not to exceed five such renewals, at the discretion of the board, authorizes the holder to perform one or more of the acts embraced in 37-3-102(6) in a manner reasonably consistent with his training, skill, and experience, subject, nevertheless, to all specifications, conditions, and limitations imposed by the board.

History: En. Sec. 15, Ch. 338, L. 1969; R.C.M. 1947, 66-1024.

37-3-305. *(Temporary)* **Qualifications for licensure.** (1) A person may not be granted a physician's license to practice medicine in this state unless the person:

(a) is of good moral character, as determined by the board;

(b) is a graduate of an approved medical school as defined in 37-3-102;

(c) has completed an approved internship of at least 1 year or, in the opinion of the board, has had experience or training that is at least the equivalent of 1 year internship;

(d) has had a completed application file reviewed by a board member and, at the discretion of the board member, has made a personal appearance before the board; and

(e) is able to communicate, in the opinion of the board, in the English language.

(2) The board may authorize the department to issue the license subject to terms of probation or other conditions or limitations set by the board or may refuse a license if the applicant has committed unprofessional conduct or is otherwise unqualified.

(3) A person may not be granted a temporary license to practice medicine in this state unless the person:

(a) is of good moral character, as determined by the board;

(b) is a graduate of an approved medical school as defined in 37-3-102;

(c) has completed an approved internship of at least 1 year or, in the opinion of the board, has had experience or training that is at least the equivalent of 1 year internship;

(d) has made a personal appearance before at least one member of the board; and

(e) is able, in the opinion of the board, to communicate in the English language.

37-3-305. *(Effective October 1, 2001)* **Qualifications for licensure.** (1) Except as provided in subsection (4), a person may not be granted a physician's license to practice medicine in this state unless the person:

(a) is of good moral character, as determined by the board;

(b) is a graduate of an approved medical school as defined in 37-3-102;

(c) has completed an approved postgraduate program of at least 2 years or, in the opinion of the board, has had experience or training that is at least the equivalent of a 2-year postgraduate program;

(d) has had a completed application file reviewed by a board member and, at the discretion of the board member, has made a personal appearance before the board; and

(e) is able to communicate, in the opinion of the board, in the English language.

(2) The board may authorize the department to issue the license subject to terms of probation or other conditions or limitations set by the board or may refuse a license if the applicant has committed unprofessional conduct or is otherwise unqualified.

(3) A person may not be granted a temporary license to practice medicine in this state unless the person:

(a) is of good moral character, as determined by the board;

(b) is a graduate of an approved medical school as defined in 37-3-102;

(c) has completed an approved postgraduate program of at least 2 years or, in the opinion of the board, has had experience or training that is at least the equivalent of a 2-year postgraduate program; and

(d) is able, in the opinion of the board, to communicate in the English language.

(4) The 2-year minimum requirements in subsections (1)(c) and (3)(c) do not apply to a person who:

(a) has completed an approved internship of at least 1 year or in the opinion of the board has had experience or training that is at least the equivalent of a 1-year internship;

(b) is a resident in good standing with the Montana family practice residency program; and

(c) is seeing patients under the supervision of a physician who possesses a current, unrestricted license to practice medicine in this state.

History: En. Sec. 18, Ch. 338, L. 1969; amd. Sec. 3, Ch. 168, L. 1971; amd. Sec. 101, Ch. 350, L. 1974; amd. Sec. 1, Ch. 213, L. 1977; R.C.M. 1947, 66-1027(1), (2); amd. Sec. 2, Ch. 323, L. 1979; amd. Sec. 3, Ch. 419, L. 1993; amd. Sec. 7, Ch. 230, L. 1999.

Compiler's Comments

1999 Amendment: Chapter 230 at beginning of (1) inserted exception clause; in (1)(c) and (3)(c) substituted "postgraduate program of at least 2 years" for "internship of at least 1 year" and at end substituted "a 2-year postgraduate program" for "1 year internship"; deleted former (3)(d) that read: "(d) has made a personal appearance before at least one member of the board"; inserted (4) outlining persons exempt from 2-year minimum postgraduate requirements; and made minor changes in style. Amendment effective October 1, 2001.

37-3-306. Physician's certificate — examination — reciprocity and endorsement. (1) The board may authorize the department to issue to an applicant a physician's certificate, certificate by reciprocity, or certificate by endorsement only on the basis of:

(a) passing an examination given and graded by the department, subject to 37-1-101;

(b) certification of record or other certificate of examination issued to or for the applicant by the national board of medical examiners or successors, by the federation licensing examination committee or successors, by the national board of examiners for osteopathic physicians and surgeons, incorporated, or by the medical council of Canada or successors if the applicant is a graduate of a Canadian medical school which has been approved by the medical council of

Canada or successors, certifying that the applicant has passed an examination given by this board; or

(c) a valid, unsuspended, and unrevoked license or certificate issued to the applicant on the basis of an examination by an examining board under the laws of another state or territory of the United States or of the District of Columbia or of a foreign country whose licensing standards at the time the license or certificate was issued were, in the judgment of the board, essentially equivalent to those of this state for granting a license to practice medicine, if under the scope of the license or certificate the applicant was authorized to practice medicine in the other state, territory, or country.

(2) No applicant who applies for a license on the basis of an examination and fails the examination may be granted a license based on credentials from another state, territory, or foreign country or on a certificate issued by the national board of medical examiners or successors, by the federation licensing examination committee or successors, or by the medical council of Canada or successors.

(3) The board may adopt reciprocity or endorsement requirements current with changes in standards in the practice of medicine.

(4) The board may, in the case of an applicant for admission by reciprocity or endorsement, require a written or oral examination of the applicant.

(5) The board may require that graduates of foreign medical schools pass an examination given by the education council for foreign medical graduates or successors.

(6) Holders of the degree of doctor of osteopathy granted in 1955 or before will be certified only on the basis of taking and passing the examination given by the department, subject to 37-1-101. Holders of the degree of doctor of osteopathy granted after 1955 will be certified in the same manner as provided above for physicians.

History: En. Sec. 16, Ch. 338, L. 1969; amd. Sec. 4, Ch. 203, L. 1971; amd. Sec. 1, Ch. 403, L. 1973; amd. Sec. 2, Ch. 166, L. 1974; amd. Sec. 99, Ch. 350, L. 1974; R.C.M. 1947, 66-1025; amd. Sec. 1, Ch. 438, L. 1979.

37-3-307. Qualifications for licensure — temporary certificate. (1) The board may authorize the department to issue to an applicant a temporary certificate to practice medicine on the basis of:

(a) passing an examination given and graded by the department, subject to 37-1-101;

(b) certification of record or other certificate of examination issued to or for the applicant by the national board of medical examiners or successors, by the federation licensing examination committee or successors, or by the medical council of Canada or successors if the applicant is a graduate of a Canadian medical school which has been approved by the medical council of Canada or successors, certifying that the applicant has passed an examination given by the board; or

(c) a valid, unsuspended, and unrevoked license or certificate issued to the applicant on the basis of an examination by an examining board under the laws of another state or territory of the United States or of the District of Columbia or of a foreign country whose licensing standards at the time the license or certificate was issued were essentially equivalent, in the judgment of the board, to those of this state at the time for granting a license to practice medicine; and

(d) being a graduate of an approved medical school who has completed 1 year of internship or its equivalent and being of good moral character and good conduct.

(2) The board may require that graduates of foreign medical schools pass the examination given by the education council for foreign medical graduates or successors.

(3) A temporary license may be issued to a physician employed by a public institution who is practicing under the direction of a licensed physician. The board may authorize the department to issue a temporary license subject to terms of probation or other conditions or limitations set by the board or may refuse a temporary license to a person if he has committed unprofessional conduct. The issuance of a temporary certificate imposes no future obligation or duty on the part of the board to grant full licensure or to renew or extend the temporary license. The board may, in the case of an applicant for a temporary certificate, require a written, oral, or practical examination of the applicant.

History: (1), (2)En. Sec. 17, Ch. 338, L. 1969; amd. Sec. 1, Ch. 166, L. 1974; amd. Sec. 100, Ch. 350, L. 1974; Sec. 66-1026, R.C.M. 1947; (3)En. Sec. 18, Ch. 338, L. 1969; amd. Sec. 3, Ch. 168, L. 1971; amd. Sec. 101, Ch. 350, L. 1974; amd. Sec. 1, Ch. 213, L. 1977; Sec. 66-1027, R.C.M. 1947; R.C.M. 1947, 66-1026, 66-1027(3).

37-3-308. Examination and application fees — further tax forbidden. (1) An applicant for a license to practice medicine to be issued on the basis of an examination by the board shall pay an examination fee as set by the board. The board shall set the fee, and it shall be reasonable and commensurate with the costs of the examination and related costs. Such examination fee shall be in addition to the application fee.

(2) All applicants, including applicants for a temporary license, shall pay an initial application fee as prescribed by the board.

(3) No license tax shall be imposed upon physicians by a municipality or any other subdivision of the state.

History: En. Sec. 22, Ch. 338, L. 1969; amd. Sec. 1, Ch. 167, L. 1974; R.C.M. 1947, 66-1031; amd. Sec. 2, Ch. 345, L. 1981.

37-3-309. Application for license. (1) A person desiring a license to practice medicine shall make application to the department, verified by oath and in a form prescribed by the board. The application must be accompanied by the license fee and documents, affidavits, and certificates necessary to establish that the applicant possesses the qualifications prescribed by this chapter apart from an examination required by the board. The burden of proof is on the applicant, but the department may make an independent investigation to determine whether the applicant possesses the qualifications and whether the applicant has committed unprofessional conduct. The applicant shall provide necessary authorizations for the release of records and information pertinent to the department's inquiry.

(2) An applicant for a license on the basis of an examination shall file the application at least 60 days prior to the announced date of the examination. If the applicant is not at the time of filing the application a graduate of but is then in attendance at an approved medical school, the applicant shall submit to the department, instead of a diploma or other required evidence of graduation, a written statement from the dean or other authorized representative of the

approved medical school that the applicant will receive a diploma at the end of the then-current school term. The applicant may not be granted a certificate until the applicant has filed with the department a diploma or other acceptable evidence of graduation from the approved medical school and has complied with the requirements of subsection (1). A license may not be issued until the applicant has satisfied the board that the applicant has completed at least 1 year of an approved internship or its equivalent and has otherwise met the requirements for the issuance of a license under this chapter.

History: En. Sec. 23, Ch. 338, L. 1969; amd. Sec. 103, Ch. 350, L. 1974; R.C.M. 1947, 66-1032; amd. Sec. 1, Ch. 348, L. 1983; amd. Sec. 24, Ch. 429, L. 1995.

37-3-310. Notice of change of address or name — applicants — licensees. When a person applies for a license of any type to practice medicine in this state, the person shall designate in his application his correct and official address to which the department shall send communications, notices, orders, citations, or other process, if any, affecting him. A person licensed to practice medicine in this state shall keep the department advised at all times of his correct mailing address and of his correct name. If the person changes his address or when the name of a licensee is changed by marriage or otherwise, the person shall within 30 days notify the department in writing of his old and new address or of the former name and new name. This information shall be entered promptly by the department in the official records of the department.

History: En. Sec. 39, Ch. 338, L. 1969; amd. Sec. 113, Ch. 350, L. 1974; R.C.M. 1947, 66-1048.

37-3-311. Examination. (1) Examinations for a license to practice medicine shall be held not less than twice each year, at a time and place specified by the board. The examination shall be conducted in the English language and shall be sufficiently comprehensive in medicine to adequately test the applicant's professional competence and ability. The examination shall be fair and impartial. Examination papers shall be identified by both the name of the applicant and a number assigned by the department. The board may require the department to use the examination prepared by the national board of medical examiners or the examination prepared by the federation licensing examination committee or successors.

(2) An applicant must meet the requirements of 37-3-305 prior to taking a scheduled examination.

(3) An applicant who is a graduate of a foreign medical school shall have passed an examination given by the education council for foreign medical graduates or its successor.

(4) The board may in its discretion require the department to give, subject to 37-1-101, an oral or practical examination to test the applicant's qualifications for licensure and grant appropriate credit for this.

(5) The board may use other Montana physicians to assist in preparing the examination.

(6) A person may not be granted a license to practice medicine if he fails to attain a passing grade as set by the board. If an applicant fails to meet the minimum grade requirements in his first examination, he may be reexamined not more than two additional times on each of the component parts of the examination. An examination fee shall be charged for each additional examination. If an applicant is prevented through no fault of his own from

taking a scheduled examination, he may, within 2 years, be examined without submitting a new application.

History: En. Sec. 24, Ch. 338, L. 1969; amd. Sec. 2, Ch. 167, L. 1974; amd. Sec. 104, Ch. 350, L. 1974; R.C.M. 1947, 66-1033; amd. Sec. 2, Ch. 348, L. 1983; amd. Sec. 1, Ch. 405, L. 1985.

37-3-312. Issuance of license. If the board determines that an applicant possesses the qualifications required by this chapter, the department shall issue a license to practice medicine, which shall be signed by the president or vice-president, attested by the secretary, and sealed with the seal of the board.

History: En. Sec. 25, Ch. 338, L. 1969; amd. Sec. 105, Ch. 350, L. 1974; R.C.M. 1947, 66-1034(part).

37-3-313. Registration fees — failure to pay — limiting authority to impose registration fees. (1) In addition to the license fees required of applicants, a licensed physician actively practicing medicine in this state shall pay to the department a registration fee as prescribed by the board.

(2) The payments for registration must be made prior to the expiration date of the registration, as set forth in a department rule, and a receipt acknowledging payment of the registration fee must be issued by the department. The department shall mail registration notices at least 60 days before the registration is due.

(3) In case of default in the payment of the registration fee by a person licensed to practice medicine who is actively practicing medicine in this state, the underlying certificate to practice medicine may be revoked by the board on 30 days' notice given to the delinquent of the time and place of considering the revocation. A registered or certified letter addressed to the last-known address of the person failing to comply with the requirements of registration, as the address appears on the records of the department, constitutes sufficient notice of intention to revoke the underlying certificate. A certificate may not be revoked for nonpayment if the person authorized to practice medicine, and notified, pays the registration fee before or at the time fixed for consideration of revocation, together with a delinquency penalty prescribed by the board. The department may collect the dues by an action at law.

(4) A registration or license fee may not be imposed on a licensee under this chapter by a municipality or any other subdivision of the state.

History: En. Sec. 33, Ch. 338, L. 1969; amd. Sec. 110, Ch. 350, L. 1974; amd. Sec. 6, Ch. 533, L. 1977; R.C.M. 1947, 66-1042; amd. Sec. 3, Ch. 345, L. 1981; amd. Sec. 25, Ch. 429, L. 1995; amd. Sec. 5, Ch. 492, L. 1997.

37-3-314. Deposit of money received. Money received under this chapter by the department shall be deposited in the state special revenue fund for the use of the board, subject to 37-1-101(6). In the case of a deficiency, the reserves in this account in the state special revenue fund may be used, on approval by the department of administration and the governor.

History: En. Sec. 34, Ch. 338, L. 1969; amd. Sec. 111, Ch. 350, L. 1974; R.C.M. 1947, 66-1043; amd. Sec. 1, Ch. 277, L. 1983.

37-3-315. Qualifications for licensure — restricted certificate — suspension — practice authorized. (1) A person may not be granted a restricted license to practice medicine in this state unless the person:

(a) is of good moral character, as determined by the board;

(b) is a graduate of an approved medical school;

(c) is licensed and engaged in the active practice of medicine in another state or foreign country, whose licensing standards are acceptable to the board;

(d) has never been subject to license discipline in any form;

(e) demonstrates evidence of research and publication:

(i) in a peer-reviewed medical journal in the English language;

(ii) in the 2 years preceding receipt of the application; and

(iii) that demonstrate the applicant's competency in the field of medicine in which the restricted license is requested;

(f) has been accepted for privileges in a hospital pending licensure by the board;

(g) has demonstrated to the satisfaction of the board the applicant's knowledge, skills, and abilities by providing evidence of at least one of the following criteria:

(i) at least 3 years' postgraduate clinical training in a formal education program;

(ii) board certification in a specialty recognized or certified by the American board of medical specialties; or

(iii) passing, in the 75th percentile or higher, a board-approved state or national examination in medicine, such as the United States medical licensing examination, the special purpose examination, an examination given by the educational commission for foreign medical graduates, or the licensing examination of another state or territory of the United States or Canada;

(h) has submitted a completed application file, which has been reviewed by the board, and has made a personal appearance before the board; and

(i) is able to communicate, in the opinion of the board, in the English language. Passing an examination given by the educational commission for foreign medical graduates or the test of English as a foreign language constitutes prima facie evidence of ability to communicate in the English language.

(2) The restricted license is suspended and subject to revocation after a hearing pursuant to the Montana Administrative Procedure Act upon one of the following:

(a) restriction, termination, or other cessation of the licensee's hospital privileges; or

(b) proof of one of the conditions or offenses identified in 37-3-323.

(3) The holder of a restricted license is limited to the practice of medicine specifically approved by the board after consideration of the applicant's training, skill, and experience. All restrictions, specifications, conditions, and limitations imposed by the board must be stated on the restricted certificate.

History: En. Sec. 2, Ch. 145, L. 1995.

37-3-316 through 37-3-320 reserved.

37-3-321. Refusal of license. If the board determines that an applicant for a license to practice medicine does not possess the qualifications or character required by this chapter or that he has committed unprofessional conduct, it shall refrain from authorizing the department to issue a license. The department shall mail to the applicant, at his last address of record with the department, written notification of the board's decision, together with notice of a time and place of a hearing before the board. If the applicant without cause fails to appear at the hearing or if after hearing the board determines he is not entitled to a license, the board shall refuse to grant the license.

History: En. Sec. 27, Ch. 338, L. 1969; amd. Sec. 106, Ch. 350, L. 1974; R.C.M. 1947, 66-1036.

Cross-References

Reporting disciplinary actions against licensees, 37-1-105.

Licensing investigation and review — record access, 37-1-135.

Grounds for disciplinary action as grounds for license denial — conditions to new licenses, 37-1-137.

37-3-322. Repealed. Sec. 128, Ch. 429, L. 1995.

History: En. Sec. 28, Ch. 338, L. 1969; amd. Sec. 107, Ch. 350, L. 1974; R.C.M. 1947, 66-1037; amd. Sec. 3, Ch. 22, L. 1979; amd. Sec. 1, Ch. 328, L. 1989; amd. Sec. 1, Ch. 164, L. 1991; amd. Sec. 4, Ch. 419, L. 1993; amd. Sec. 11, Ch. 619, L. 1993.

37-3-323. Revocation or suspension of license. (1) The department may make an investigation whenever it is brought to its attention that there is reason to suspect that a person having a license or certificate to practice medicine in this state:

(a) is mentally or physically unable to safely engage in the practice of medicine, has procured a license to practice medicine by fraud or misrepresentation or through mistake, has been declared incompetent by a court of competent jurisdiction and has not later been lawfully declared competent, or has a condition that impairs the person's intellect or judgment to the extent that it incapacitates the person for the safe performance of professional duties;

(b) has been guilty of unprofessional conduct;

(c) has practiced medicine with a suspended or revoked license;

(d) has had a license to practice medicine suspended or revoked by any licensing authority for reasons other than nonpayment of fees; or

(e) while under probation has violated its terms.

(2) The investigation must be for the purpose of determining the probability of the existence of these conditions or the commission of these offenses and may, upon order of the board, include requiring the person to submit to a physical examination or a mental examination, or both, by a physician or physicians selected by the board if it appears to be in the best interests of the public that this evaluation be secured. The board may examine and scrutinize the hospital records and reports of a licensee as part of the examination, and copies must be released to the board on written request.

(3) If a person holding a license to practice medicine under this chapter is by a final order or adjudication of a court of competent jurisdiction adjudged to be mentally incompetent, to be addicted to the use of addictive substances, or to have been committed pursuant to 53-21-127, the person's license may be suspended by the board. The suspension continues until the licensee is found or adjudged by the court to be restored to reason or cured or until the person is discharged as restored to reason or cured and the person's professional competence has been proved to the satisfaction of the board.

History: En. Sec. 29, Ch. 338, L. 1969; amd. Sec. 108, Ch. 350, L. 1974; amd. Sec. 1, Ch. 63, L. 1975; amd. Sec. 3, Ch. 101, L. 1977; R.C.M. 1947, 66-1038; amd. Sec. 1, Ch. 321, L. 1989; amd. Sec. 1, Ch. 540, L. 1991; amd. Sec. 5, Ch. 419, L. 1993; amd. Sec. 26, Ch. 429, L. 1995; amd. Sec. 7, Ch. 490, L. 1997.

Cross-References

Contested cases, Title 2, ch. 4, part 6.

Judicial review of contested cases, Title 2, ch. 4, part 7.

Reporting disciplinary actions against licensees, 37-1-105.

Licensing investigation and review — record access, 37-1-135.

Disciplinary authority of boards — injunctions, 37-1-136.

37-3-324. Reconsideration and review of actions of board. The board may, on its own motion or upon application at any time after refusal, suspension, or the revocation of a license or of probation or of other action as in this chapter provided, reconsider its prior action and grant, reinstate, or restore such license or terminate the suspension thereof or terminate probation or reduce the severity of its prior disciplinary action, provided that the taking of any such further action or the holding of a hearing with respect thereto shall rest in the sole discretion of the board.

History: En. Sec. 30, Ch. 338, L. 1969; R.C.M. 1947, 66-1039.

37-3-325. Violations — penalties. (1) A person practicing medicine in this state without complying with parts 1 through 3 of this chapter or an association or corporation (except a professional service corporation under Title 35, chapter 4) practicing medicine in this state or a person, association, or corporation violating parts 1 through 3 of this chapter or an officer or director of an association or corporation violating parts 1 through 3 of this chapter is guilty of a misdemeanor and on conviction shall be fined not less than $250 or more than $1,000 or imprisoned in the county jail for not less than 90 days or more than 1 year, or both. Each daily failure to comply with or each daily violation of parts 1 through 3 of this chapter constitutes a separate offense.

(2) A person presenting or attempting to file as his own the diploma, license, certificate, or credentials of another or who gives false or forged evidence to the board, a member of the board, or the department in connection with an application for a license to practice medicine or who practices medicine under a false or assumed name or who falsely impersonates another licensee is guilty of a felony and on conviction shall be imprisoned in the state penitentiary for a term of not less than 1 year or more than 10 years.

History: En. Sec. 32, Ch. 338, L. 1969; amd. Sec. 109, Ch. 350, L. 1974; R.C.M. 1947, 66-1041.

Cross-References

Criminal justice policy — rights of convicted, Art. II, sec. 28, Mont. Const.

Penalty for unlawful use of physician assistant-certified, 37-20-104.

Criminal responsibility and accountability of corporations, 45-2-311, 45-2-312.

Perjury and other falsification in official matters, Title 45, ch. 7, part 2.

37-3-326. Injunctive relief — manner of charging violation. Notwithstanding any other provision in this chapter, the board may maintain an action to enjoin a person from engaging in the practice of medicine until a license to practice medicine is procured. A person who has been enjoined and who violates the injunction is punishable for contempt of court. The injunction does not relieve the person practicing medicine without a license from a criminal prosecution. The remedy by injunction is in addition to remedies provided for the criminal prosecution of the offender. In charging a person in a complaint for injunction or in an affidavit, information, or indictment with a violation of this law by practicing medicine without a license, it is sufficient to charge that he did, on a certain day and in a certain county, engage in the practice of medicine not having a license to do so, without averring further or more particular facts concerning the violation.

History: En. Sec. 36, Ch. 338, L. 1969; amd. Sec. 112, Ch. 350, L. 1974; R.C.M. 1947, 66-1045.

Cross-References

Issuance of injunctions on nonjudicial days, 3-1-302, 3-5-302.

Contempts, Title 3, ch. 1, part 5.

Injunctions, Rule 65, M.R.Civ.P. (see Title 25, ch. 20); Title 27, ch. 19.

Affidavits, Title 26, ch. 1, part 10.

Disciplinary authority of boards — injunctions, 37-1-136.

37-3-327. Subpoena — fees. Whenever the board in the transaction of any of its business or in the conduct of any hearing or whenever any person interested in such business or hearing desires to secure the presence for testimony of any person before the board, the board or such person may procure a subpoena from the clerk of district court of the county in which the business is to be transacted or the hearing held. The clerk of the district court shall issue the subpoena in the name of the state of Montana, commanding the person whose presence and testimony is desired to appear before the board at a certain time and place fixed by the board to testify in the manner of such business or in such hearing. The subpoena shall be served in the same manner as a subpoena for a trial in the district court and shall be substantially in the same form. Fees or other charges demanded by a person commanded to appear and testify shall be only those which may be demanded by witnesses in causes in the district court and under the same circumstances.

History: En. Sec. 37, Ch. 338, L. 1969; R.C.M. 1947, 66-1046.

Cross-References

Power of agencies and hearings officer to issue subpoenas, 2-4-104, 2-4-611.

Subpoenas, Rule 45, M.R.Civ.P. (see Title 25, ch. 20); Title 26, ch. 2, part 1.

Arrest of witness for disobedience of subpoena, 26-2-106, 26-2-107.

37-3-328. Failure to appear or testify. Any person subpoenaed in the manner provided in 37-3-327 who fails or refuses to appear and testify shall be dealt with by the district court from which such subpoena was issued in the same manner and to the same effect as though the subpoena had commanded him to appear and testify in a cause on trial in said court.

History: En. Sec. 38, Ch. 338, L. 1969; R.C.M. 1947, 66-1047.

Cross-References

Contempts, Title 3, ch. 1, part 5.

Subpoenas, Rule 45, M.R.Civ.P. (see Title 25, ch. 20); Title 26, ch. 2, part 1.

37-3-329 through 37-3-332 reserved.

37-3-333. Written informed consent for breast cancer treatment. (1) For the purpose of this section, "written informed consent" means an agreement in writing that is freely executed by the patient that certifies that full disclosure has been made to the patient about:

(a) the full range of efficacious medical treatment alternatives that may be viable, including surgical procedures relating to the removal of breast tissue, radiological or chemotherapeutic treatments or any other generally accepted medical treatment, or combinations of procedures and treatments;

(b) the advantages, disadvantages, risks, and descriptions of the procedures and treatments listed in subsection (1)(a); and

(c) aspects of recovery, including the options that are available for reconstructive surgery.

(2) Failure of a physician or surgeon to provide written informed consent as provided in subsection (1) constitutes unprofessional conduct.

History: En. Sec. 3, Ch. 410, L. 1997.

Cross-References

Revocation or suspension for unprofessional conduct, 37-3-323.

37-3-334 through 37-3-340 reserved.

37-3-341. *(Effective October 1, 2000)* **Legislative findings.** The Montana legislature previously found, in 37-3-101, that the practice of medicine in Montana is a privilege, not a natural right, and that the regulation of the practice of medicine is necessary to ensure the health, happiness, safety, and welfare of the people of Montana. The legislature now finds that because of technological advances and changing patterns of medical practice, medicine is increasingly being practiced by electronic means across state lines. Although access to technological advances is in the public interest, the legislature also finds that regulation of the practice of medicine across state lines is necessary to protect the public against the unprofessional, improper, unauthorized, and unqualified practice of medicine. Accordingly, the legislature finds that physicians outside the boundaries of Montana who enter the state by electronic or other technological means to practice medicine for compensation on patients inside Montana are seeking the benefit and protection of the laws of Montana and are subject to the licensure and regulatory requirements provided in 37-3-341 through 37-3-349.

History: En. Sec. 1, Ch. 371, L. 1999.

Compiler's Comments

Effective Date: Section 12(2), Ch. 371, L. 1999, provided: "(2) [Sections 1 through 9] are effective on passage and approval [approved April 20, 1999] for the purpose of proposing rules that will be adopted on or after October 1, 2000, and are effective for all other purposes on October 1, 2000."

37-3-342. *(Effective October 1, 2000)* **Definition — scope of practice allowed by telemedicine certificate.** (1) As used in 37-3-301 and 37-3-341 through 37-3-349, "telemedicine" means the practice of medicine, as defined in 37-3-102, by a physician located outside the state who performs an evaluative or therapeutic act relating to the treatment or correction of a patient's physical or mental condition, ailment, disease, injury, or infirmity and who transmits that evaluative or therapeutic act into Montana through any means, method, device, or instrumentality under the following conditions:

(a) The information or opinion is provided for compensation or with the expectation of compensation.

(b) The physician does not limit the physician's services to an occasional case.

(c) The physician has an established or regularly used connection with the state, including but not limited to:

(i) an office or another place for the reception of a transmission from the physician;

(ii) a contractual relationship with a person or entity in Montana related to the physician's practice of medicine; or

(iii) privileges in a Montana hospital or another Montana health care facility, as defined in 50-5-101.

(2) As used in 37-3-301 and 37-3-341 through 37-3-349, telemedicine does not mean:

(a) an act or practice that is exempt from licensure under 37-3-103;

(b) an informal consultation, made without compensation or expectation of compensation, between an out-of-state physician and a physician or other health care provider located in Montana;

(c) the transfer of patient records, independent of any other medical service and without compensation;

(d) communication about a Montana patient with the patient's physician or other health care provider who practices in Montana, in lieu of direct communication with the Montana patient or the patient's legal representative;

(e) diagnosis of a medical condition by a physician located outside the state, based upon an x-ray, cardiogram, pap smear, or other specimen sent for evaluation to the physician outside the state by a health care provider in Montana; or

(f) a communication from a physician located outside Montana to a patient in Montana in collaboration with a physician or other health care provider licensed to practice medicine in Montana.

History: En. Sec. 2, Ch. 371, L. 1999.

Compiler's Comments

Effective Date: Section 12(2), Ch. 371, L. 1999, provided: "(2) [Sections 1 through 9] are effective on passage and approval [approved April 20, 1999] for the purpose of proposing rules that will be adopted on or after October 1, 2000, and are effective for all other purposes on October 1, 2000."

37-3-343. *(Effective October 1, 2000)* **Practice of telemedicine prohibited without certificate — scope of practice limitations — violations and penalty.** (1) A physician may not practice telemedicine in this state without a telemedicine certificate issued pursuant to 37-3-301 and 37-3-341 through 37-3-349.

(2) A telemedicine certificate authorizes an out-of-state physician to practice telemedicine only with respect to the specialty in which the physician is board-certified or meets the current requirements to take the examination to become board-certified and on which the physician bases the physician's application for a telemedicine certificate pursuant to 37-3-345(2).

(3) A telemedicine certificate authorizes an out-of-state physician to practice only telemedicine. A telemedicine certificate does not authorize the physician to engage in the practice of medicine while physically present within the state.

(4) A physician who practices telemedicine in this state without a telemedicine certificate issued pursuant to 37-3-301 and 37-3-341 through 37-3-349, in violation of the terms or conditions of that certificate, in violation of the scope of practice allowed by the certificate, or without a physician's certificate of licensure issued pursuant to 37-3-301(2)(a), is guilty of a misdemeanor and on conviction shall be sentenced as provided in 37-3-325.

History: En. Sec. 3, Ch. 371, L. 1999.

Compiler's Comments

Effective Date: Section 12(2), Ch. 371, L. 1999, provided: "(2) [Sections 1 through 9] are effective on passage and approval [approved April 20, 1999] for the purpose of proposing rules that will be adopted on or after October 1, 2000, and are effective for all other purposes on October 1, 2000."

37-3-344. *(Effective October 1, 2000)* **Application for telemedicine certificate.** (1) A person desiring a telemedicine certificate shall apply to the department and verify the application by oath, in a form prescribed by the board.

(2) The application must be accompanied by:

(a) a certificate fee prescribed by board rule; and

(b) documents required by the board that establish that the applicant possesses the qualifications prescribed by 37-3-341 through 37-3-349 and the rules of the board. The burden of proof is on the applicant, but the department may make an independent investigation to determine whether the applicant possesses the requisite qualifications.

(3) The application must include a clear statement that the applicant consents to the jurisdiction of the state as specified in 37-3-349.

(4) The applicant shall provide to the board authorizations necessary for the release of records and other information required by the board.

History: En. Sec. 4, Ch. 371, L. 1999.

Compiler's Comments

Effective Date: Section 12(2), Ch. 371, L. 1999, provided: "(2) [Sections 1 through 9] are effective on passage and approval [approved April 20, 1999] for the purpose of proposing rules that will be adopted on or after October 1, 2000, and are effective for all other purposes on October 1, 2000."

37-3-345. *(Effective October 1, 2000)* **Qualifications for telemedicine certificate — basis for denial.** The board may not grant a telemedicine certificate to a physician unless the physician has established under oath that the physician:

(1) has a full, active, unrestricted certificate to practice medicine in another state or territory of the United States or the District of Columbia;

(2) is board-certified or meets the current requirements to take the examination to become board-certified in a medical specialty pursuant to the standards of, and approved by, the American board of medical specialties or the American osteopathic association bureau of osteopathic specialists;

(3) has no history of disciplinary action or limitation of any kind imposed by a state or federal agency in a jurisdiction where the physician is or has ever been licensed to practice medicine;

(4) is not the subject of a pending investigation by a state medical board or another state or federal agency;

(5) has no history of conviction of a crime related to the physician's practice of medicine;

(6) has submitted proof of current malpractice or professional negligence insurance coverage in the amount to be set by the rules of the board;

(7) has not paid, or had paid on the physician's behalf, on more than three claims of professional malpractice or negligence within the 5 years preceding the physician's application for a telemedicine certificate;

(8) has identified an agent for service of process in Montana who is registered with the secretary of state and the board and who may be a physician certified to practice medicine in this state;

(9) has paid an application fee in an amount set by the rules of the board; and

(10) has submitted as a part of the application form a sworn statement attesting that the physician has read, understands, and agrees to abide by Title 37, chapters 1 and 3, and the administrative rules governing the practice of medicine in Montana.

History: En. Sec. 5, Ch. 371, L. 1999.

Compiler's Comments

Effective Date: Section 12(2), Ch. 371, L. 1999, provided: "(2) [Sections 1 through 9] are effective on passage and approval [approved April 20, 1999] for the purpose of proposing rules that will be adopted on or after October 1, 2000, and are effective for all other purposes on October 1, 2000."

37-3-346. *(Effective October 1, 2000)* **Certificate renewal — fee.** (1) A physician certified to practice telemedicine shall renew the telemedicine certificate every 2 years.

(2) The physician shall complete and return an application for renewal provided by the board by a date established by board rule.

(3) The physician shall pay an application renewal fee in an amount established by board rule.

History: En. Sec. 6, Ch. 371, L. 1999.

Compiler's Comments

Effective Date: Section 12(2), Ch. 371, L. 1999, provided: "(2) [Sections 1 through 9] are effective on passage and approval [approved April 20, 1999] for the purpose of proposing rules that will be adopted on or after October 1, 2000, and are effective for all other purposes on October 1, 2000."

37-3-347. *(Effective October 1, 2000)* **Reasons for denial of certificate — alternative route to licensed practice.** (1) The board may deny an application for a telemedicine certificate if the applicant:

(a) fails to demonstrate that the applicant possesses the qualifications for a certificate required by 37-3-341 through 37-3-349 and the rules of the board;

(b) fails to pay a required fee;

(c) does not possess the qualifications or character required by this chapter; or

(d) has committed unprofessional conduct.

(2) A physician who does not meet the qualifications for a telemedicine certificate provided in 37-3-345 may apply for a physician's license in order to practice medicine in Montana.

History: En. Sec. 7, Ch. 371, L. 1999.

Compiler's Comments

Effective Date: Section 12(2), Ch. 371, L. 1999, provided: "(2) [Sections 1 through 9] are effective on passage and approval [approved April 20, 1999] for the purpose of proposing rules that will be adopted on or after October 1, 2000, and are effective for all other purposes on October 1, 2000."

37-3-348. *(Effective October 1, 2000)* **Discipline of physician with telemedicine certificate.** A physician granted a telemedicine certificate may be subject to investigation and discipline on the grounds that the physician has:

(1) committed unprofessional conduct, as described in 37-1-316 or in a board rule; or

(2) failed to:

(a) maintain the qualifications provided in 37-3-345 or in a board rule;

(b) maintain complete, legible patient records in written or readily retrievable electronic form;

(c) make complete, legible patient records available to the board during an investigation or disciplinary proceeding concerning the physician's practice of telemedicine; or

(d) appear and testify at a deposition within the state in the course of an investigation or disciplinary proceeding conducted under Montana law that concerns the physician's practice of telemedicine.

History: En. Sec. 8, Ch. 371, L. 1999.

Compiler's Comments

Effective Date: Section 12(2), Ch. 371, L. 1999, provided: "(2) [Sections 1 through 9] are effective on passage and approval [approved April 20, 1999] for the purpose of proposing rules that will be adopted on or after October 1, 2000, and are effective for all other purposes on October 1, 2000."

37-3-349. *(Effective October 1, 2000)* **Consent to jurisdiction.** A physician granted a telemedicine certificate shall, pursuant to 37-3-344, consent to the jurisdiction of:

(1) the courts of Montana for the purpose of civil actions, including but not limited to tort, contract, and equitable actions, related to the physician's practice of telemedicine;

(2) the courts of Montana for the purpose of criminal actions related to the physician's practice of telemedicine;

(3) the board for the purposes of licensing and disciplinary action by the board; and

(4) the Montana medical legal panel for matters within the panel's jurisdiction, as provided in Title 27, chapter 6.

History: En. Sec. 9, Ch. 371, L. 1999.

Compiler's Comments

Effective Date: Section 12(2), Ch. 371, L. 1999, provided: "(2) [Sections 1 through 9] are effective on passage and approval [approved April 20, 1999] for the purpose of proposing rules that will be adopted on or after October 1, 2000, and are effective for all other purposes on October 1, 2000."

Part 4
Reporting Obligations

Part Cross-References

Montana Medical Legal Panel Act, Title 27, ch. 6.

Unfair trade practices and consumer protection, Title 30, ch. 14.

Information required of professional liability insurers — submission, 33-23-311.

Duty of Department to investigate unprofessional conduct, 37-1-101.

Reporting disciplinary actions against licensees, 37-1-105.

Duties of Director in investigation of unethical conduct, 37-1-121.

Duty of Board to adopt rules on conduct, 37-1-131.

Licensing investigation and review — record access, 37-1-135.

Nonliability for peer review, Title 37, ch. 2, part 2.

37-3-401. Report of incompetence or unprofessional conduct. (1) Notwithstanding any provision of state law dealing with confidentiality, each licensed physician, professional standards review organization, and the Montana medical association or any component society of the association shall and any other person may report to the board any information that the physician, organization, association, society, or person has that appears to show that a physician is:

(a) medically incompetent;

(b) mentally or physically unable to safely engage in the practice of medicine; or

(c) guilty of unprofessional conduct.

(2) (a) Information that relates to possible physical or mental impairment connected to habitual intemperance or excessive use of addictive drugs, alcohol, or any other drug or substance by a licensee or to other mental or chronic physical illness of a licensee may be reported to the appropriate personnel of the program established by the board under 37-3-203(4), in lieu of reporting directly to the board.

(b) The program personnel referred to in subsection (2)(a) shall report to the board the identity of a licensee and all facts and documentation in their possession if:

(i) the licensee fails or refuses to comply with a reasonable request that the licensee undergo a mental, physical, or chemical dependency evaluation or a combination of evaluations;

(ii) the licensee fails or refuses to undergo a reasonable course of treatment that they recommend, including reasonable aftercare;

(iii) the licensee fails or refuses to satisfactorily complete a reasonable evaluation, a course of treatment, or aftercare;

(iv) the licensee's condition creates a risk of harm to the licensee, a patient, or others; or

(v) they are in possession of information that appears to show that the licensee has or is otherwise engaged in unprofessional conduct.

(3) This section applies to professional standards review organizations only to the extent that the organizations are not prohibited from disclosing information under federal law.

History: En. 66-1053 by Sec. 1, Ch. 172, L. 1977; R.C.M. 1947, 66-1053; amd. Sec. 6, Ch. 419, L. 1993.

37-3-402. Insurer to report to board. Any insurer that issues or underwrites professional liability insurance in this state to any physician licensed to practice medicine shall report any claim against the insured for alleged professional negligence to the state board of medical examiners within 30 days after receiving notice of the claim from the insured or any other person. A final settlement or court decision resolving the claim in favor of the claimant shall also be reported to the board within 30 days of such settlement or decision. The report required by this section shall include the name of the insured, the name of the person making the claim, the reason or reasons for which the claim is made, and the basis of the settlement or court decision.

History: En. 66-1054 by Sec. 2, Ch. 172, L. 1977; R.C.M. 1947, 66-1054; amd. Sec. 4, Ch. 243, L. 1981.

37-3-403. Report of prohibition or limitation on practice by hospital. Each hospital or health care facility that prohibits or limits the privilege of a physician to practice medicine within that facility shall report the action to the state board of medical examiners within 30 days after the action is taken. The report must include the reason or reasons for the prohibition or limitation.

History: En. 66-1055 by Sec. 3, Ch. 172, L. 1977; R.C.M. 1947, 66-1055; amd. Sec. 27, Ch. 429, L. 1995.

37-3-404. Immunity of person providing information. A person, organization, association, society, or health care facility which in good faith provides information to the state board of medical examiners as required by 37-3-401, 37-3-402, or 37-3-403 is not subject to suit for civil damages as a result thereof.

History: En. 66-1056 by Sec. 4, Ch. 172, L. 1977; R.C.M. 1947, 66-1056.

37-3-405. Suspension of license or privilege for failure to report. The willful failure of any person, organization, association, society, or health care facility to comply with 37-3-401, 37-3-402, or 37-3-403 is grounds for suspension of any license or privilege granted by the state of Montana. Upon such failure, the agency granting the license or privilege may, in its discretion, suspend the license or privilege for a period not to exceed 1 month.

History: En. 66-1057 by Sec. 5, Ch. 172, L. 1977; R.C.M. 1947, 66-1057.

Cross-References

Suspension of license subject to contested case procedure, 2-4-631.

CHAPTER 4

DENTISTRY AND DENTAL HYGIENE

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37-4-511. Limitations on the administration of general anesthetics and practices involving general anesthesia.
37-4-512 through 37-4-514 reserved.
37-4-515. Hospital admissions — patient histories and examinations.

Chapter Cross-References

Professional service corporations, Title 35, ch. 4.

General provisions relating to health care practitioners, Title 37, ch. 2.

Limitations on dentistry and oral surgery practices involving general anesthesia, 37-4-511.

Denturitry, Title 37, ch. 29.

Validity of consent to medical treatment, Title 41, ch. 1, part 4.

Dentist to report child abuse, 41-3-201.

Duty of dentist to report violation of Montana Elder and Persons With Developmental Disabilities Abuse Prevention Act, 52-3-811.

Part 1
General

37-4-101. Definitions — practice of dentistry. (1) Unless the context requires otherwise, in this chapter, the following definitions apply:

(a) "Board" means the board of dentistry provided for in 2-15-1842.

(b) "Conscious sedation" means a minimally depressed level of consciousness in which the patient breathes normally without assistance, retains protective reflexes, and responds to physical stimulation or verbal command in a manner appropriate to the patient's cognitive level. Conscious sedation is not a form of general anesthesia, and brief interludes of unconsciousness during conscious sedation do not bring conscious sedation within the scope of general anesthesia.

(c) "Department" means the department of commerce provided for in Title 2, chapter 15, part 18.

(d) "General anesthesia" means a state of unconsciousness intentionally produced by anesthetic agents, with absence of pain sensation over the entire body and a greater or lesser degree of muscular relaxation. The drugs producing this state can be administered by inhalation, intravenously, intramuscularly, or via the gastrointestinal tract. General anesthesia is divided into:

(i) full general anesthesia, which means a level of consciousness in which the patient is without intact protective reflexes, is unable to maintain an airway, and is incapable of rational response to query or command; and

(ii) light general anesthesia, which means a level of consciousness in which the patient breathes normally without assistance and retains protective reflexes throughout most of the procedure.

(e) "General anesthetic" means any recognized anesthetic agent, sedative, hypnotic, tranquilizer, or narcotic used in sufficient prescribed dosages for the purpose of inducing general anesthesia. The term does not include a nitrous oxide/oxygen mixture or any other anesthetic administered to produce conscious sedation.

(2) Except for the provisions of 37-4-104, a person is "practicing dentistry" under this chapter if the person:

(a) performs, attempts, advertises to perform, causes to be performed by the patient or any other person, or instructs in the performance of dental operations, oral surgery, or dental service of any kind gratuitously or for a salary, fee, money, or other remuneration paid or to be paid, directly or indirectly, to the person, any other person, or any agency;

(b) is a manager, proprietor, operator, or conductor of a place where dental operations, oral surgery, or dental services are performed, unless the person is the personal representative of the estate of a deceased dentist or the personal representative of a disabled dentist, as provided in 37-4-104;

(c) directly or indirectly, by any means or method, furnishes, supplies, constructs, reproduces, or repairs a prosthetic denture, bridge, appliance, or other structure to be worn in the human mouth;

(d) places the appliance or structure in the human mouth or attempts to adjust it;

(e) advertises to the public, by any method, to furnish, supply, construct, reproduce, or repair a prosthetic denture, bridge, appliance, or other structure to be worn in the human mouth;

(f) diagnoses, professes to diagnose, prescribes for, professes to prescribe for, treats, or professes to treat disease, pain, deformity, deficiency, injury, or physical condition of human teeth, jaws, or adjacent structures;

(g) extracts or attempts to extract human teeth or corrects, attempts, or professes to correct malpositions of teeth or of the jaw;

(h) gives or professes to give interpretations or readings of dental roentgenograms;

(i) administers an anesthetic of any nature, subject to the limitations provided in 37-4-511, in connection with a dental operation;

(j) uses the words "dentist", "dental surgeon", or "oral surgeon", the letters "D.D.S.", "D.M.D.", or any other words, letters, title, or descriptive matter that in any way represents the person as being able to diagnose, treat, prescribe, or operate for any disease, pain, deformity, deficiency, injury, or physical condition of human teeth, jaws, or adjacent structures;

(k) states, advertises, or permits to be stated or advertised, by sign, card, circular, handbill, newspaper, radio, or otherwise, that the person can perform or will attempt to perform dental operations or render a diagnosis in connection with dental operations; or

(l) engages in any of the practices included in the curricula of recognized dental colleges.

History: (1)En. 66-901.1 by Sec. 77, Ch. 350, L. 1974; Sec. 66-901.1, R.C.M. 1947; (2)En. Sec. 10, Ch. 48, L. 1935; re-en. Sec. 3115.10, R.C.M. 1935; amd. Sec. 2, Ch. 38, L. 1941; amd. Sec. 3, Ch. 34, L. 1961; amd. Sec. 5, Ch. 352, L. 1969; amd. Sec. 83, Ch. 350, L. 1974; Sec. 66-910, R.C.M. 1947; R.C.M. 1947, 66-901.1, 66-910(1); amd. Sec. 3, Ch. 274, L. 1981; amd. Sec. 4, Ch. 363, L. 1981; amd. Sec. 1, Ch. 518, L. 1985; amd. Sec. 1, Ch. 151, L. 1997.

Cross-References

Exemptions from physician's licensing requirements, 37-3-103.

37-4-102. Designations constituting prima facie evidence of practicing dentistry. Except for the provisions in 37-4-104, appending the word "dentist" or the letters "D.D.S.", "D.M.D.", or similar letters to a person's name on a door or a sign, in a printed or published form, or in any other type of advertisement is prima facie evidence that the person is engaged in the practice of dentistry and is subject to the regulations, convictions, and penalties of this chapter.

History: En. Sec. 12, Ch. 48, L. 1935; re-en. Sec. 3115.12, R.C.M. 1935; R.C.M. 1947, 66-912; amd. Sec. 2, Ch. 151, L. 1997.

37-4-103. Exemptions. (1) A dental laboratory or dental technician is not practicing dentistry under this chapter when engaged in the construction, making, alteration, or repairing of bridges, crowns, dentures, or other prosthetic appliances, surgical appliances, or orthodontic appliances if the casts, models, or impressions on which the work is constructed have been made by a regularly licensed and practicing dentist and the crowns, bridges, dentures, prosthetic appliances, surgical appliances, or orthodontic appliances are returned to the dentist on whose order the work was constructed.

(2) Section 37-4-101(2) and part 5 of this chapter do not apply to a legally qualified physician or surgeon or to a dental surgeon of the United States army, navy, public health service, or veterans' bureau or to a legal practitioner of another state making a clinical demonstration before a dental society, convention, or association of dentists or to a licensed dental hygienist performing an act authorized under 37-4-401 or 37-4-405.

(3) This chapter does not prevent a bona fide faculty member of a school, college, or department of a university recognized and approved by the board from performing dental procedures necessary to the faculty member's teaching functions. This chapter does not prevent students from performing dental procedures under the supervision of a bona fide instructor of a school, college, or department of a university recognized and approved by the board if the dental procedures are a part of the assigned teaching curriculum.

(4) This chapter does not prohibit or require a license with respect to the practice of denturitry under the conditions and limitations defined by Title 37, chapter 29. None of the regulations contained in this chapter apply to a person engaged in the lawful practice of denturitry.

(5) This chapter does not require the licensure of or prohibit the personal representative of the estate of a deceased dentist or the personal representative of a disabled dentist from contracting with a dentist to manage the dental

practice at an establishment where dental operations, oral surgery, or dental services are provided if the personal representative in either case complies with the provisions of 37-4-104.

(6) Section 37-4-101(2)(b) does not prevent a licensee from entering into a contract with or being employed by the following clinics:

(a) university clinics for the purpose of providing dental care to registered students;

(b) correctional facilities for the purpose of providing dental care to inmates; and

(c) federally funded community health centers, migrant health care centers, or programs for health services for the homeless established pursuant to the Public Health Service Act, 42 U.S.C. 254b.

(7) A clinic that employs or otherwise contracts with a dentist under subsection (6) may not:

(a) govern the clinical sufficiency, suitability, reliability, or efficacy of a particular service, product, process, or activity as it relates to the delivery of dental care; or

(b) preclude or otherwise restrict a dentist's ability to exercise independent professional judgment over all qualitative and quantitative aspects of the delivery of dental care.

History: En. Sec. 10, Ch. 48, L. 1935; re-en. Sec. 3115.10, R.C.M. 1935; amd. Sec. 2, Ch. 38, L. 1941; amd. Sec. 3, Ch. 34, L. 1961; amd. Sec. 5, Ch. 352, L. 1969; amd. Sec. 83, Ch. 350, L. 1974; R.C.M. 1947, 66-910(2), (4); amd. Sec. 1, Ch. 337, L. 1979; amd. Sec. 24, I.M. No. 97, approved Nov. 6, 1984; amd. Sec. 3, Ch. 151, L. 1997; amd. Sec. 8, Ch. 230, L. 1999.

Compiler's Comments

1999 Amendment: Chapter 230 inserted (6) outlining certain clinics that can enter into contracts or be employed with licensees; and inserted (7) prohibiting clinic employing or contracting with dentist from governing certain activities related to delivery of dental care or precluding or restricting dentist's independence related to certain aspects of dental care delivery. Amendment effective April 2, 1999.

37-4-104. Twelve-month period for disposition of deceased or disabled dentist's practice by personal representative — restrictions. (1) For the purpose of selling or otherwise disposing of a deceased or a disabled licensee's dental practice and for a period not to exceed 12 months, a person who is not licensed to practice dentistry but who is the personal representative of the estate of a deceased dentist or the personal representative of a disabled dentist may contract with a dentist to manage the dental practice at an establishment where dental operations, oral surgery, or dental services are provided.

(2) A personal representative may not:

(a) govern the clinical sufficiency, suitability, reliability, or efficacy of a particular service, product, process, or activity as it relates to the delivery of dental care;

(b) preclude or otherwise restrict a dentist's ability to exercise independent professional judgment over all qualitative and quantitative aspects of the delivery of dental care;

(c) allow any person other than a dentist to supervise and control the selection, compensation, terms, conditions, obligations, or privileges of employment or retention of clinical personnel in the dental practice;

(d) determine or limit a fee charged by the dentist or limit the methods of payment accepted by a dentist or the dentist's practice; or

(e) limit or define the scope of services offered by the dentist.

(3) For the purposes of this section:

(a) "clinical" means having a significant relationship, whether real or potential, direct or indirect, to the actual rendering or outcome of dental care, the practice of dentistry, or the quality of dental care being rendered to a patient;

(b) "disabled" has the same meaning as provided for the term "permanently and totally disabled" in 15-30-111; and

(c) "personal representative" of the estate of a deceased dentist has the same meaning as provided for the term in 72-1-103.

(4) The 12-month period provided for in subsection (1) begins when:

(a) the personal representative of the estate of a deceased dentist files a verified copy of the death certificate of the deceased with the department; or

(b) the personal representative of the disabled dentist files a verified copy of a document signed by a licensed physician that attests to the dentist's disability.

History: En. Sec. 5, Ch. 151, L. 1997.

Part 2
Board of Dentistry

Part Cross-References

Right to know, Art. II, sec. 9, Mont. Const.

Open meetings, Title 2, ch. 3, part 2.

Meeting defined, 2-3-202.

Power of agencies and hearings officer to issue subpoenas, 2-4-104, 2-4-611.

Public records, Title 2, ch. 6.

Allocation of boards for administrative purposes, 2-15-121.

Quasi-judicial boards, 2-15-124.

Board established, 2-15-1842.

Preservation of records, Title 22, ch. 3, part 2.

Subpoenas, Rule 45, M.R.Civ.P. (see Title 25, ch. 20); Title 26, ch. 2, part 1.

Arrest of witness for disobedience of subpoena, 26-2-106, 26-2-107.

Duties of Department, Director, and boards, Title 37, ch. 1, part 1.

Duty of Department to keep records and provide facilities, 37-1-101.

Licensing investigation and review — record access, 37-1-135.

Disrupting meeting as disorderly conduct, 45-8-101.

37-4-201. Official seal — organization — subpoena power. Said board shall have an official seal of its own design and shall employ the same to authenticate its acts and records as may be required. The board shall, at its annual meeting, choose from its members a president, vice-president, and secretary-treasurer, who shall serve at the pleasure of the board. Any member of the board shall have the power to administer oaths and affirmations and said board shall have the power to hear testimony and subpoena witnesses as to all matters relating to the duties imposed upon it by law.

History: En. Sec. 3, Ch. 48, L. 1935; re-en. Sec. 3115.3, R.C.M. 1935; R.C.M. 1947, 66-903.

Cross-References

Oaths, Title 1, ch. 6.

37-4-202. Meetings — notice — quorum — records. (1) The board shall meet at least once each year in this state at the call of the president and secretary-treasurer. Five days' notice must be given by the department to board members of the time and place of the meeting of the board.

(2) Meetings held for the purpose of examining candidates for a license to practice dentistry in this state may not exceed 6 days.

(3) Six members of the board constitute a quorum for the transaction of business. Its proceedings are open to public inspection in cases of public interest.

(4) Money collected by the department under this chapter must be deposited in the state special revenue fund for the use of the board, subject to 37-1-101(6).

(5) The department shall keep a complete record of meetings and proceedings of the board and shall keep a complete account of money received and disbursements made by the department.

History: (1), (3) thru (5)En. Sec. 4, Ch. 48, L. 1935; re-en. Sec. 3115.4, R.C.M. 1935; amd. Sec. 147, Ch. 147, L. 1963; amd. Sec. 25, Ch. 177, L. 1965; amd. Sec. 21, Ch. 93, L. 1969; amd. Sec. 1, Ch. 352, L. 1969; amd. Sec. 78, Ch. 350, L. 1974; Sec. 66-904, R.C.M. 1947; (2)En. Sec. 9, Ch. 48, L. 1935; re-en. Sec. 3115.9, R.C.M. 1935; amd. Sec. 149, Ch. 147, L. 1963; amd. Sec. 4, Ch. 352, L. 1969; amd. Sec. 82, Ch. 350, L. 1974; amd. Sec. 29, Ch. 439, L. 1975; amd. Sec. 2, Ch. 531, L. 1977; Sec. 66-909, R.C.M. 1947; R.C.M. 1947, 66-904, 66-909(2); amd. Sec. 2, Ch. 316, L. 1979; amd. Sec. 1, Ch. 277, L. 1983; amd. Sec. 2, Ch. 524, L. 1987; amd. Sec. 15, Ch. 481, L. 1997.

37-4-203. Compensation and expenses of board members — disbursement of excess funds. (1) Out of the funds derived from fees collected under this chapter, each member of the board shall receive compensation and travel expenses as provided for in 37-1-133.

(2) Money collected in excess of expenses and salaries provided for shall be held by the department as a special fund for meeting the expenses of the board, the proper administration of this chapter, and educational purposes considered wise by the board.

History: En. Sec. 9, Ch. 48, L. 1935; re-en. Sec. 3115.9, R.C.M. 1935; amd. Sec. 149, Ch. 147, L. 1963; amd. Sec. 4, Ch. 352, L. 1969; amd. Sec. 82, Ch. 350, L. 1974; amd. Sec. 29, Ch. 439, L. 1975; amd. Sec. 2, Ch. 531, L. 1977; R.C.M. 1947, 66-909(1), (3); amd. Sec. 5, Ch. 363, L. 1981; amd. Sec. 8, Ch. 474, L. 1981.

37-4-204. Affiliation with national association authorized — delegates. The board may affiliate with the national association as an active member, pay regular annual dues to the association, and send delegates to the meetings of the association.

History: En. Sec. 20, Ch. 48, L. 1935; re-en. Sec. 3115.20, R.C.M. 1935; amd. Sec. 8, Ch. 352, L. 1969; amd. Sec. 87, Ch. 350, L. 1974; R.C.M. 1947, 66-920; amd. Sec. 6, Ch. 363, L. 1981; amd. Sec. 9, Ch. 474, L. 1981; amd. Sec. 1, Ch. 349, L. 1983.

37-4-205. Rulemaking. The board may adopt, amend, or repeal rules necessary for the implementation, continuation, and enforcement of this chapter in accordance with the Montana Administrative Procedure Act. Rules adopted under this section may include but are not limited to the following subjects:

(1) the practice of dentistry or oral surgery involving the administration of anesthetics; and

(2) advertising by a licensed dentist including:

(a) the use of false, deceptive, or misleading advertising;

(b) the use of information concerning fees, areas of practice, specialization, personal background, and quality of service in advertising; and

(c) the use of warnings and disclaimers in advertising.

History: En. Sec. 2, Ch. 349, L. 1983; amd. Sec. 3, Ch. 518, L. 1985.

Cross-References

Montana Administrative Procedure Act, Title 2, ch. 4.

Unfair trade practices and consumer protection, Title 30, ch. 14.

Part 3
Licensing

Part Cross-References

Licensing to follow contested case procedure, 2-4-631.

Suspension of license fees for persons in military service, 10-1-605.

Duty of Department to administer and grade examinations, 37-1-101.

Duty of Board to adopt and enforce licensing and certification rules, 37-1-131.

Licensing boards to establish fees commensurate with costs, 37-1-134.

Licensing investigation and review — record access, 37-1-135.

Grounds for disciplinary action as grounds for license denial — conditions to new licenses, 37-1-137.

Licensure of criminal offenders, Title 37, ch. 1, part 2.

Nondiscrimination in licensing, 49-3-204.

37-4-301. Examination — qualifications — fees — certification. (1) Applicants for licensure shall take and pass an examination in order to be licensed. The examination shall consist of a written part and a practical or clinical part. It may also include, at the board's discretion, an oral interview with the board which may include questions pertaining to the practice of dentistry. The board may accept, in satisfaction of the written part, successful completion of an examination by the national board of dental examiners and, whenever the board determines necessary, successful completion of a board examination in jurisprudence to be administered at times and places approved by the board. The board may accept, in satisfaction of the practical part, successful completion of an examination by a board-designated regional testing service.

(2) Acceptance by the board of such written and practical examination shall be conditioned on evidence that the examination is sufficiently thorough to test the fitness of the applicant to practice dentistry. It shall include, written in the English language, questions on anatomy, histology, physiology, chemistry, pharmacology and therapeutics, metallurgy, pathology, bacteriology, anesthesia, operative and surgical dentistry, prosthetic dentistry, prophylaxis, orthodontics, periodontics and endodontics, and any additional subjects pertaining to dental service.

(3) The board has the right to administer its own examination in lieu of acceptance of the national board written examination and a regional testing service practical examination. The board is authorized to make rules governing any such examination procedures.

(4) Applicants for licensure shall submit an application, which shall include, when required:

(a) certification of successful completion of the national board written examination;

(b) certification of successful completion of a regional board practical examination;

(c) three affidavits of good moral character;
(d) certificate of graduation from a board-approved dental school;
(e) an examination fee commensurate with costs and set by the board;
(f) a licensure fee commensurate with costs and set by the board;
(g) a recent photograph of the applicant; and
(h) copies of all other state licenses that are held by the applicant.

(5) Applications must be submitted no less than 20 days prior to the board interview and jurisprudence examination.

(6) Applicants may not take the jurisprudence examination or the oral interview without first having completed and passed all other parts of the examination.

(7) Examination results will be accepted for a period of time as set by board rule. An applicant failing to pass his first examination, if otherwise qualified, may take a subsequent examination upon payment of a fee commensurate with costs and set by the board.

(8) The board is authorized to adopt necessary and reasonable rules governing application procedures.

History: En. Sec. 5, Ch. 48, L. 1935; re-en. Sec. 3115.5, R.C.M. 1935; amd. Sec. 1, Ch. 38, L. 1941; amd. Sec. 1, Ch. 34, L. 1961; amd. Sec. 2, Ch. 352, L. 1969; amd. Sec. 1, Ch. 287, L. 1971; amd. Sec. 79, Ch. 350, L. 1974; R.C.M. 1947, 66-905; amd. Sec. 2, Ch. 337, L. 1979; amd. Sec. 3, Ch. 349, L. 1983; amd. Sec. 1, Ch. 62, L. 1987.

37-4-302. Recognition of dental schools and dental hygiene schools. In determining what constitutes a recognized dental college, the board shall be guided by the standards, canons, and practices required for recognition by the commission on dental accreditation. In determining what constitutes a recognized dental hygiene school, the board shall recognize only those dental hygiene schools accredited by the commission on dental accreditation or its successor as designated by the United States department of education or the council on post-secondary accreditation, or both.

History: En. Sec. 24, Ch. 48, L. 1935; re-en. Sec. 3115.24, R.C.M. 1935; amd. Sec. 13, Ch. 352, L. 1969; R.C.M. 1947, 66-924; amd. Sec. 1, Ch. 66, L. 1991.

37-4-303. Replacing lost certificate. The department shall, on proof satisfactory to the board of the loss of a certificate issued under this chapter, issue a duplicate certificate, and a fee as prescribed by the board shall be charged for issuing the certificate.

History: En. Sec. 6, Ch. 48, L. 1935; re-en. Sec. 3115.6, R.C.M. 1935; amd. Sec. 2, Ch. 34, L. 1961; amd. Sec. 148, Ch. 147, L. 1963; amd. Sec. 3, Ch. 352, L. 1969; amd. Sec. 80, Ch. 350, L. 1974; R.C.M. 1947, 66-906(1); amd. Sec. 1, Ch. 66, L. 1981; amd. Sec. 4, Ch. 345, L. 1981.

37-4-304. Repealed. Sec. 4, Ch. 66, L. 1981.

History: En. Sec. 7, Ch. 48, L. 1935; re-en. Sec. 3115.7, R.C.M. 1935; R.C.M. 1947, 66-907.

37-4-305. Repealed. Sec. 4, Ch. 66, L. 1981.

History: En. Sec. 8, Ch. 48, L. 1935; re-en. Sec. 3115.8, R.C.M. 1935; amd. Sec. 81, Ch. 350, L. 1974; R.C.M. 1947, 66-908.

37-4-306. Repealed. Sec. 128, Ch. 429, L. 1995.

History: En. Sec. 6, Ch. 48, L. 1935; re-en. Sec. 3115.6, R.C.M. 1935; amd. Sec. 2, Ch. 34, L. 1961; amd. Sec. 148, Ch. 147, L. 1963; amd. Sec. 3, Ch. 352, L. 1969; amd. Sec. 80, Ch. 350, L. 1974; R.C.M. 1947, 66-906(2); amd. Sec. 5, Ch. 345, L. 1981.

37-4-307. Renewal fee — default — local fees prohibited. (1) Each licensed dentist shall pay a renewal fee to the board. The renewal fee must be set by the board commensurate with costs. Notice of the change in the amount of renewal fees must be given to each dentist registered in this state by the department.

(2) Payment of the renewal fee must be made on or before the license expiration date set by department rule, and a license renewal must be issued by the department. A reasonable late fee must be required by the department if the renewal fee is not paid in a timely manner.

(3) (a) In case of default in payment of the renewal fee by a licensee, the license must be forfeited by the licensee. The board shall give the licensee 30 days' notice of its proposed forfeiture action. The notice must be sent by certified letter addressed to the last-known address of the licensee and must contain a statement of the time and place of the meeting at which the forfeiture will be considered.

(b) If the licensee pays the renewal fee, plus a reasonable late fee set by the board, prior to the time set for forfeiture, the license may not be forfeited.

(c) A license forfeited for nonpayment of the renewal fee may be reinstated within 5 years of forfeiture if:

(i) renewal fees are paid for each renewal period that they were unpaid, plus a late penalty fee for each renewal period;

(ii) the applicant produces evidence, satisfactory to the board, of good standing with the dentistry regulatory agencies of any jurisdiction in which the applicant has engaged in the active practice of dentistry since the last payment of a renewal fee under this chapter; and

(iii) the applicant produces evidence, satisfactory to the board, of good character and competence.

(4) Each dentist shall give the board notice of any change in name, address, or status within 30 days of the change.

(5) A unit of local government, including those exercising self-government powers, may not impose a license fee on a dentist licensed under this chapter.

History: En. Sec. 6, Ch. 48, L. 1935; re-en. Sec. 3115.6, R.C.M. 1935; amd. Sec. 2, Ch. 34, L. 1961; amd. Sec. 148, Ch. 147, L. 1963; amd. Sec. 3, Ch. 352, L. 1969; amd. Sec. 80, Ch. 350, L. 1974; R.C.M. 1947, 66-906(3) thru (6); amd. Sec. 3, Ch. 337, L. 1979; amd. Sec. 6, Ch. 345, L. 1981; amd. Sec. 7, Ch. 363, L. 1981; amd. Sec. 4, Ch. 349, L. 1983; amd. Sec. 28, Ch. 429, L. 1995; amd. Sec. 6, Ch. 492, L. 1997; amd. Sec. 9, Ch. 230, L. 1999.

Compiler's Comments

1999 Amendment: Chapter 230 at end of first sentence in (3)(a) substituted "forfeited by the licensee" for "revoked by the board"; in second and third sentences in (3)(a), in (3)(b), and in (3)(c) substituted "forfeiture" for "revocation"; in (3)(b) and (3)(c) substituted "forfeited" for "revoked"; and made minor changes in style. Amendment effective October 1, 1999.

37-4-308 through 37-4-310 reserved.

37-4-311. Rehabilitation. The board shall establish a protocol for the referral to a board-approved rehabilitation program for licensed dentists who are found to be physically or mentally impaired by habitual intemperance or the excessive use of addictive drugs, alcohol, or any other drug or substance or by mental illness or chronic physical illness.

History: En. Sec. 1, Ch. 358, L. 1997.

37-4-312. Report of incompetence or unprofessional conduct. (1) Notwithstanding any provision of state law dealing with confidentiality, each licensed dentist, professional standards review organization, the Montana dental association or any component society of the association, and any other person may report to the board any information that the dentist, organization, association, society, or person has that appears to show that a dentist is physically or mentally impaired by habitual intemperance or excessive use of addictive drugs, alcohol, or any other drug or substance or by mental illness or chronic physical illness.

(2) (a) Information that relates to possible physical or mental impairment connected to habitual intemperance or the excessive use of addictive drugs, alcohol, or any other drug or substance by a licensee or to other mental or chronic physical illness of a licensee may be reported to the appropriate personnel of the program endorsed by the board under 37-4-311 in lieu of reporting directly to the board.

(b) The program personnel referred to in subsection (2)(a) shall report to the board the identity of a licensee and all facts and documentation in their possession if:

(i) the licensee fails or refuses to comply with a reasonable request that the licensee undergo a mental, physical, or chemical dependency evaluation or a combination of evaluations;

(ii) the licensee fails or refuses to undergo a reasonable course of treatment that they recommend, including reasonable aftercare;

(iii) the licensee fails or refuses to satisfactorily complete a reasonable evaluation, a course of treatment, or aftercare; or

(iv) the licensee's condition creates a risk of harm to the licensee, a patient, or others.

(3) This section applies to professional standards review organizations only to the extent that the organizations are not prohibited from disclosing information under federal law.

History: En. Sec. 2, Ch. 358, L. 1997.

37-4-313. Compelling licensee evaluation. The board has the right to compel an evaluation of a licensee, after notice to the licensee and a hearing if requested by the licensee, based on information reported pursuant to 37-4-312. The evaluation must be conducted at a facility authorized to conduct evaluations under a program referred to in 37-4-311.

History: En. Sec. 3, Ch. 358, L. 1997.

37-4-314. Immunity of person providing information. A person, organization, association, society, or health care facility that in good faith provides information to the state board of dentistry pursuant to 37-4-312 is not subject to suit for civil damages as a result of providing the information.

History: En. Sec. 4, Ch. 358, L. 1997.

37-4-315 through 37-4-320 reserved.

37-4-321. Repealed. Sec. 128, Ch. 429, L. 1995.

History: En. Sec. 13, Ch. 48, L. 1935; re-en. Sec. 3115.13, R.C.M. 1935; amd. Sec. 6, Ch. 352, L. 1969; amd. Sec. 85, Ch. 350, L. 1974; R.C.M. 1947, 66-913(1), (2); amd. Sec. 1, Ch. 493, L. 1979; amd. Sec. 8, Ch. 363, L. 1981; amd. Sec. 2, Ch. 62, L. 1987; amd. Sec. 44, Ch. 83, L. 1989.

37-4-322. When publishing professional cards not unprofessional conduct. (1) It shall not be considered unprofessional for a dentist to place in any newspaper or publication, subject to the limitations stated hereafter, a card bearing his name only, together with his degree or the word "dentist" and giving office location, hours, and telephone numbers. If he limits his practice to a specialty he may so announce it or he may announce his absence from or his return to practice in the same manner.

(2) A dentist may publish a list of his fees, but such listing must include full and complete information stating if the published fee is minimum, maximum, or usual and whether or not any additional charges may be made for the services published. All announcements or publications must be done in a professional manner that will in no way coerce or confuse the public.

History: En. Sec. 17, Ch. 48, L. 1935; re-en. Sec. 3115.17, R.C.M. 1935; amd. Sec. 5, Ch. 34, L. 1961; amd. Sec. 7, Ch. 352, L. 1969; R.C.M. 1947, 66-917; amd. Sec. 2, Ch. 493, L. 1979.

37-4-323. Repealed. Sec. 128, Ch. 429, L. 1995.

History: En. Sec. 13, Ch. 48, L. 1935; re-en. Sec. 3115.13, R.C.M. 1935; amd. Sec. 6, Ch. 352, L. 1969; amd. Sec. 85, Ch. 350, L. 1974; R.C.M. 1947, 66-913(3) thru (6); amd. Sec. 3, Ch. 493, L. 1979.

37-4-324. Repealed. Sec. 128, Ch. 429, L. 1995.

History: En. Sec. 16, Ch. 48, L. 1935; re-en. Sec. 3115.16, R.C.M. 1935; R.C.M. 1947, 66-916.

37-4-325. Witness fees and mileage. (1) Each witness who shall appear by order of the board or any member thereof shall be entitled to receive, if demanded, for his attendance the same fees and mileage allowed by law to a witness in civil cases in the district court, which amount shall be paid by the party at whose request such witness is subpoenaed unless otherwise ordered by the board. When any witness who has not been required to attend at the request of any party is subpoenaed by the board, his fees and mileage may be paid from the funds of the board in the same manner as other expenses of the board are paid.

(2) Any witness subpoenaed, except one whose fees and mileage may be paid from the funds of the board, may at the time of service demand the fee to which he is entitled for travel to and from the place at which he is required to appear and 1 day's attendance. If such witness demands such fees at the time of service and they are not at that time paid or tendered, he shall not be required to attend before the board or a member thereof or referee as directed in the subpoena.

History: En. Sec. 15, Ch. 48, L. 1935; re-en. Sec. 3115.15, R.C.M. 1935; R.C.M, 1947, 66-915.

Cross-References

Mileage allowed witnesses, 2-18-503, 2-18-504.

Witness fees, Title 26, ch. 2, part 5.

37-4-326. Acts constituting misdemeanors. A person, company, or association is guilty of a misdemeanor and upon conviction shall be punished with a fine of not less than $50 or more than $200 or by imprisonment for not more than 6 months in the county jail or both if the person, company, or association:

(1) sells, barters, or offers to sell or barter a diploma or document conferring or purporting to confer any dental degree or any certificate or transcript made or purporting to be made pursuant to the laws regulating the license and regulation of dentists;

(2) purchases or procures by barter a diploma, certificate, or transcript with the intent of using the diploma, certificate, or transcript as evidence of the holder's qualification to practice dentistry or in fraud of the laws regulating dental practice;

(3) with fraudulent intent, alter in a material regard a diploma, certificate, or transcript;

(4) use or attempt to use a diploma, certificate, or transcript that has been purchased, fraudulently issued, counterfeited, or materially altered, either as a license or color of license to practice dentistry or in order to procure registration as a dentist;

(5) practice dentistry under a false or assumed name;

(6) in an affidavit required of an applicant for examination, license, or registration under this chapter, willfully make a false statement in a material regard;

(7) engage in the practice of dentistry under any title or name without causing to be displayed in a conspicuous manner and in a conspicuous place in the office the required certificate for the current period of licensed practice; or

(8) within 10 days after demand made by the secretary of the board, fail to furnish to the board the names and addresses of all persons practicing or assisting in the practice of dentistry in the office of the person, company, or association at any time within 60 days prior to the notice, together with a sworn statement showing under and by what license or authority the person, company, or association and the employee are and have been practicing dentistry, but the affidavit may not be used as evidence against the person, company, or association in any proceeding under this section.

History: En. Sec. 18, Ch. 48, L. 1935; re-en. Sec. 3115.18, R.C.M. 1935; R.C.M. 1947, 66-918; amd. Sec. 7, Ch. 492, L. 1997.

Cross-References

Willfully defined, 1-1-204.

Criminal responsibility and accountability of corporations, 45-2-311, 45-2-312.

37-4-327. Practicing dentistry without certificate — penalty. (1) Except as provided in 37-4-101 through 37-4-104 and this section, a person who, as principal, agent, employer, employee, or assistant, practices dentistry or who does an act of dentistry without having first secured a certificate to practice dentistry from the department entitling the person to practice in this state is guilty of a misdemeanor and on conviction in a district court may be fined an amount not less than $500 or more than $1,000 or be confined for a period not exceeding 6 months in the county jail.

(2) Fines imposed and collected under this chapter, except those paid to a justice's court, must be paid into the treasury of the county in which the suits, actions, or proceedings are commenced. Money paid into the treasury in excess of the amount necessary to reimburse the county for expense incurred by the county in a suit, action, or proceeding brought under this chapter must be deposited before January 1 of each year in the state special revenue fund for the use of the board, subject to 37-1-101(6).

History: En. Sec. 19, Ch. 48, L. 1935; re-en. Sec. 3115.19, R.C.M. 1935; amd. Sec. 3, Ch. 38, L. 1941; amd. Sec. 150, Ch. 147, L. 1963; amd. Sec. 86, Ch. 350, L. 1974; R.C.M. 1947, 66-919; amd. Sec. 1, Ch. 277, L. 1983; amd. Sec. 22, Ch. 557, L. 1987; amd. Sec. 4, Ch. 151, L. 1997.

Cross-References

Collection and disposition of fines, penalties, forfeitures, and fees, 3-10-601.

37-4-328. Duty of county attorney — jurisdiction of justices' courts — injunction. (1) The county attorney of the county in which an offense is alleged to have occurred shall attend to the prosecution of complaints made under this chapter, both on trial in the justice's court where the complaint is made and also on hearing in the district court, either on the complaint or on information or indictment filed against a person under this chapter in the district court. This chapter does not prevent the prosecution of a person for violation of this chapter on the information of the county attorney directly.

(2) Justice's courts have original concurrent jurisdiction of misdemeanors committed under this chapter.

(3) If a person, firm, or corporation engages in the practice of dentistry without possessing a valid license or violates this chapter, the attorney general, a county attorney, or the board may maintain an action in the name of this state to enjoin the person, firm, or corporation from engaging in the practice of dentistry or otherwise violating this chapter. The injunction does not relieve criminal prosecution, but the remedy by injunction is in addition to the liability of the offender to criminal prosecution.

History: En. Sec. 11, Ch. 48, L. 1935; re-en. Sec. 3115.11, R.C.M. 1935; amd. Sec. 4, Ch. 34, L. 1961; amd. Sec. 84, Ch. 350, L. 1974; R.C.M. 1947, 66-911.

Cross-References

Duties of Attorney General, 2-15-501.

Issuance of injunctions on nonjudicial days, 3-1-302, 3-5-302.

Contempts, Title 3, ch. 1, part 5.

Criminal jurisdiction of Justices' Courts, 3-10-303.

Prosecutorial duties of County Attorney, 7-4-2712.

Duties of County Attorney relating to state matters, 7-4-2716.

Injunctions, Rule 65, M.R.Civ.P. (see Title 25, ch. 20); Title 27, ch. 19.

Affidavits, Title 26, ch. 1, part 10.

Disciplinary authority of boards — injunctions, 37-1-136.

Part 4

Dental Hygienists and Auxiliary Personnel

Part Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

Suspension of license fees for persons in military service, 10-1-605.

Duty of Department to administer and grade examinations, 37-1-101.

Reporting disciplinary actions against licensees, 37-1-105.

Licensing boards to establish fees commensurate with costs, 37-1-134.

Licensing investigation and review — record access, 37-1-135.

Exemptions from physician's licensing requirements, 37-3-103.

Practice of healing arts not practice of medicine, 37-3-103(1)(n).

Limitations on administration of general anesthetics, 37-4-511.

37-4-401. Practice of dental hygiene. The practice of dental hygiene is services, performed by a licensed preventive oral health practitioner known as a dental hygienist, that are educational, therapeutic, prophylactic, or preventive procedures in nature, as the board in writing defines and authorizes, and that may be performed under general supervision of a licensed dentist. The practice of dental hygiene also includes and the board shall authorize the administration of local anesthetic agents by a licensed dental hygienist certified by the board to administer the agents only under the direct supervision and authorization of a licensed dentist. However, this section does not allow the board or a licensed dentist to delegate any of the following duties:

(1) diagnosis, treatment planning, and prescription;

(2) surgical procedures on hard and soft tissues other than root planing and subgingival curettage;

(3) restorative, prosthetic, orthodontic, and other procedures which require the knowledge and skill of a dentist;

(4) prescription for drugs or medications or work authorizations.

History: En. Sec. 21, Ch. 48, L. 1935; re-en. Sec. 3115.21, R.C.M. 1935; amd. Sec. 9, Ch. 352, L. 1969; amd. Sec. 88, Ch. 350, L. 1974; R.C.M. 1947, 66-921(part); amd. Sec. 5, Ch. 349, L. 1983; amd. Sec. 1, Ch. 449, L. 1985; amd. Sec. 2, Ch. 66, L. 1991.

37-4-402. License — examination. (1) The department may issue licenses for the practice of dental hygiene to qualified applicants to be known as dental hygienists.

(2) Except as provided by rules adopted under 37-1-319, a person may not engage in the practice of dental hygiene or practice as a dental hygienist in this state until the person has passed an examination approved by the board under rules it considers proper and has been issued a license by the department.

(3) Applicants for licensure shall take and pass an examination in order to be licensed. The examination shall consist of a written part and a practical or clinical part. The board may accept, in satisfaction of the written part, successful completion of an examination by the national board of dental examiners and, whenever the board determines necessary, successful completion of a board examination in jurisprudence. The board may accept, in satisfaction of the practical part, successful completion of an examination by a board-designated regional testing service.

(4) The board has the right to administer its own examination in lieu of acceptance of the national board written examination and a regional testing service practical examination. The board is authorized to make rules governing examination procedures.

(5) Applicants for licensure shall submit an application, which must include, when required:

(a) certification of successful completion of the national board written examination;

(b) certification of successful completion of a regional board practical examination;

(c) two affidavits of good moral character;

(d) certificate of graduation from a board-approved dental hygiene school;

(e) an examination fee commensurate with costs and set by the board;

(f) a licensure fee commensurate with costs and set by the board;

(g) a recent photograph of the applicant; and

(h) copies of all other state licenses that are held by the applicant.

(6) Applications must be submitted no less than 20 days prior to the jurisprudence examination. Applicants may not take the jurisprudence

examination without first having completed and passed all other parts of the examination.

(7) Examination results will be accepted for a period of time as set by board rule. An applicant failing to pass the first examination, if otherwise qualified, may take a subsequent examination on payment of a fee commensurate with costs and set by the board.

(8) The board is authorized to adopt necessary and reasonable rules governing application procedures.

History: En. Secs. 21, 23, Ch. 48, L. 1935; re-en. Secs. 3115.21, 3115.23, R.C.M. 1935; amd. Secs. 9, 11, Ch. 352, L. 1969; amd. Secs. 88, 90, Ch. 350, L. 1974; R.C.M. 1947, 66-921(part), 66-923(3); amd. Sec. 4, Ch. 337, L. 1979; amd. Sec. 6, Ch. 349, L. 1983; amd. Sec. 2, Ch. 449, L. 1985; amd. Sec. 29, Ch. 429, L. 1995.

37-4-403. Issuance of certificate — fee. An applicant who successfully passes the examination prescribed by the board shall, on the payment of a fee prescribed by the board, be granted a license as a dental hygienist and shall be registered in a record kept by the department and shall receive a certificate, signed by the members of the board, in a form prescribed by the board.

History: En. Sec. 21, Ch. 48, L. 1935; re-en. Sec. 3115.21, R.C.M. 1935; amd. Sec. 9, Ch. 352, L. 1969; amd. Sec. 88, Ch. 350, L. 1974; R.C.M. 1947, 66-921(5); amd. Sec. 7, Ch. 345, L. 1981.

37-4-404. Repealed. Sec. 128, Ch. 429, L. 1995.

History: En. Sec. 23, Ch. 48, L. 1935; re-en. Sec. 3115.23, R.C.M. 1935; amd. Sec. 11, Ch. 352, L. 1969; amd. Sec. 90, Ch. 350, L. 1974; R.C.M. 1947, 66-923(1), (2), (4); amd. Sec. 8, Ch. 345, L. 1981; amd. Sec. 7, Ch. 349, L. 1983; amd. Sec. 3, Ch. 66, L. 1991.

37-4-405. Dental hygienist to practice under supervision of licensed dentist. (1) A licensed dental hygienist, with the permission of the supervising dentist, may practice in the office of a licensed and actively practicing dentist, in a public or private institution, under a board of health, or in a public clinic authorized by the board, under the general supervision of a licensed dentist; however, the dental hygienist may give instruction in oral hygiene without the supervision of a licensed dentist in a public or private institution or hospital or extended care facility or under a board of health or in a public clinic.

(2) For the purposes of this section, "supervision" is defined as follows:

(a) "direct supervision" means treatment by a dental auxiliary or licensed dental hygienist provided with the intent and knowledge of the dentist. The treatment must be performed while the dentist is on the premises.

(b) "general supervision" means treatment, except the administration of local anesthesia, by a licensed dental hygienist provided with the intent and knowledge of the dentist licensed and residing in the state of Montana. The supervising dentist need not be on the premises.

History: En. Sec. 21, Ch. 48, L. 1935; re-en. Sec. 3115.21, R.C.M. 1935; amd. Sec. 9, Ch. 352, L. 1969; amd. Sec. 88, Ch. 350, L. 1974; R.C.M. 1947, 66-921(6); amd. Sec. 4, Ch. 493, L. 1979; amd. Sec. 9, Ch. 363, L. 1981; amd. Sec. 4, Ch. 66, L. 1991.

37-4-406. Renewal fee — default — forfeiture of license — local fees prohibited. (1) Each licensed dental hygienist shall pay a renewal fee to the board. The renewal fee must be set by the board commensurate with costs.

(2) Payment of the renewal fee must be made on or before the license expiration date set by department rule, and a license renewal must be issued

by the department. A reasonable late fee must be required if the renewal fee is not paid in a timely manner.

(3) In case of default in payment of the renewal fee by any licensee, the licensee shall forfeit the license.

(a) The board shall give the licensee 30 days' notice of its proposed forfeiture action. The notice must be sent by certified mail to the last-known address of the licensee and must contain a statement of the time and place of the meeting at which the forfeiture will be considered.

(b) The payment of the renewal fee on or before the time set for forfeiture, with a reasonable late fee set by the board, excuses the default.

(c) A license forfeited for nonpayment of the renewal fee may be reinstated within 5 years of forfeiture if:

(i) renewal fees are paid for each period that they were unpaid, plus a late penalty for each period;

(ii) the applicant produces evidence, satisfactory to the board, of good standing with the dental hygiene regulatory agencies of any jurisdiction in which the applicant has engaged in the active practice of dental hygiene since the last payment of a renewal fee under this chapter; and

(iii) the applicant produces evidence, satisfactory to the board, of good character and competence.

(4) Each dental hygienist shall give the board notice of any change in name, address, or status within 30 days of the change.

(5) The board may, after a hearing, revoke or suspend the license of a dental hygienist for violating this chapter.

(6) A unit of local government, including those exercising self-government powers, may not impose a license fee on a dental hygienist licensed under this chapter.

History: En. Sec. 22, Ch. 48, L. 1935; re-en. Sec. 3115.22, R.C.M. 1935; amd. Sec. 10, Ch. 352, L. 1969; amd. Sec. 89, Ch. 350, L. 1974; R.C.M. 1947, 66-922; amd. Sec. 5, Ch. 337, L. 1979; amd. Sec. 9, Ch. 345, L. 1981; amd. Sec. 8, Ch. 349, L. 1983; amd. Sec. 30, Ch. 429, L. 1995; amd. Sec. 8, Ch. 492, L. 1997; amd. Sec. 10, Ch. 230, L. 1999.

Compiler's Comments

1999 Amendment: Chapter 230 in (3) substituted "licensee shall forfeit" for "board must revoke"; and in first and second sentences in (3)(a), in (3)(b), and in (3)(c) substituted "forfeiture" for "revocation"; in (3)(c) substituted "forfeited" for "revoked"; and made minor changes in style. Amendment effective October 1, 1999.

37-4-407. Provisions not to apply to licensed dentist, physician, or surgeon. Nothing in this chapter relating to the practice of dental hygiene applies to its practice by a licensed dentist or a licensed physician and surgeon in this state.

History: En. Sec. 23, Ch. 48, L. 1935; re-en. Sec. 3115.23, R.C.M. 1935; amd. Sec. 11, Ch. 352, L. 1969; amd. Sec. 90, Ch. 350, L. 1974; R.C.M. 1947, 66-923(5).

37-4-408. Auxiliary personnel — employment, duties, and limitations. A dental auxiliary is a person other than a licensed dental hygienist employed by a licensed dentist. The board may, within the limitations of this chapter, adopt rules that define the qualifications and outline the tasks of any unlicensed auxiliary personnel to be employed by a licensed dentist in his office, except that nothing in this section may be construed to allow the board by rule to provide for delegation by a licensed dentist to any such auxiliary personnel any of the duties prohibited to dental hygienists under 37-4-401 or a prophylaxis. The performance of intraoral tasks by all dental auxiliaries, as permitted by board rules, must be under the direct supervision of the licensed dentist employing the personnel.

History: En. Sec. 66-923.1 by Sec. 12, Ch. 352, L. 1969; R.C.M. 1947, 66-923.1; amd. Sec. 9, Ch. 349, L. 1983; amd. Sec. 5, Ch. 66, L. 1991.

Part 5
Regulatory Provisions

Part Cross-References

Montana Unfair Trade Practices and Consumer Protection Act of 1973, Title 30, ch. 14, part 1.

37-4-501. Work order for construction or repair of appliances. (1) A licensed dentist who employs or engages the services of a person, firm, or corporation to construct, reproduce, make, alter, or repair bridges, crowns, dentures, other prosthetic appliances, surgical appliances, or orthodontic appliances shall furnish the person, firm, or corporation with a written work authorization on forms prescribed by the board which shall contain:

(a) the name and address of the person, firm, or corporation to which the work authorization is directed;

(b) the patient's name or identification number, but if only a number is used the patient's name shall be written on the duplicate copy of the work authorization retained by the dentist;

(c) the date on which the work authorization was written;

(d) a description of the work to be done, including diagrams if necessary;

(e) a specification of the type and quality of the materials to be used; and

(f) the signature of the dentist and the number of his license to practice dentistry.

(2) The person, firm, or corporation receiving a work authorization from a licensed dentist shall retain the original work authorization and the dentist shall retain the duplicate copy for inspection at a reasonable time by the board for a period of 2 years from date of issuance.

History: En. Sec. 10, Ch. 48, L. 1935; re-en. Sec. 3115.10, R.C.M. 1935; amd. Sec. 2, Ch. 38, L. 1941; amd. Sec. 3, Ch. 34, L. 1961; amd. Sec. 5, Ch. 352, L. 1969; amd. Sec. 83, Ch. 350, L. 1974; R.C.M. 1947, 66-910(3).

37-4-502. Restrictions on advertising and solicitation. No person, firm, or corporation engaged in the business of constructing, altering, or repairing bridges, crowns, dentures, other prosthetic appliances, surgical appliances, or orthodontic appliances may advertise the services, technique, or materials to the general public by means of advertisements in public newspapers, magazines, or by radio, television, display advertisements, or by any other means except advertisements in professional or trade papers, trade journals, trade directories, trade periodicals, trade magazines, and listings in business and telephone directories limited to name, address, and telephone number, which may not occupy more than the number of lines necessary to disclose the information; nor may a person, firm, or corporation so engaged in any way directly solicit the patronage of the general public.

History: En. Sec. 10, Ch. 48, L. 1935; re-en. Sec. 3115.10, R.C.M. 1935; amd. Sec. 2, Ch. 38, L. 1941; amd. Sec. 3, Ch. 34, L. 1961; amd. Sec. 5, Ch. 352, L. 1969; amd. Sec. 83, Ch. 350, L. 1974; R.C.M. 1947, 66-910(5).

37-4-503. Identification of dentures. All nonmetal full dentures shall be permanently identified with the first and last name of the owner at the time of processing the dentures.

History: En. Sec. 5, Ch. 493, L. 1979.

37-4-504 through 37-4-510 reserved.

37-4-511. Limitations on the administration of general anesthetics and practices involving general anesthesia. (1) No person engaged in the practice of dentistry or oral surgery may perform any dental or surgical procedure upon another person if a general anesthetic is administered unless such anesthetic is administered and monitored by:

(a) an anesthesiologist licensed to practice medicine by the state board of medical examiners;

(b) a nurse anesthetist recognized in that specialty by the state board of nursing; or

(c) another health professional who has received at least 1 year of postgraduate training in the administration of general anesthesia.

(2) No person engaged in the practice of dentistry or oral surgery may conduct any dental or surgical procedure upon another person under full general anesthesia unless the vital signs of the patient are continually monitored by another health professional who meets the qualifications for an anesthesiologist, nurse anesthetist, or other trained health professional as provided for in subsection (1).

(3) No person engaged in the practice of dentistry or oral surgery may conduct any dental or surgical procedure upon another person under light general anesthesia unless the vital signs of the patient are continually monitored by another person who has been examined by the board or its agent in life support skills and demonstrated a satisfactory level of proficiency as established by the board.

(4) No person engaged in the practice of dentistry or oral surgery may administer a general anesthetic to any other person unless he satisfies the requirements for a person qualified to administer a general anesthetic, as provided in subsection (1), and meets any additional standards established by the board of dentistry for training in the administration of general anesthesia and in the treatment of the complications thereof. This subsection does not affect the requirements for monitoring of vital signs by another health professional under subsection (2) or (3).

(5) The facility in which general anesthesia is to be administered as part of a dental or surgical procedure must be equipped with proper drugs and equipment to safely administer anesthetic agents, to monitor the well-being of the patient under general anesthesia, and to treat the complications that may arise from general anesthesia.

History: En. Sec. 2, Ch. 518, L. 1985.

37-4-512 through 37-4-514 reserved.

37-4-515. Hospital admissions — patient histories and examinations. (1) For purposes of this section, "oral surgeon" means a dentist who has successfully completed a postgraduate program in oral surgery accredited by a nationally recognized accreditation body approved by the United States office of education.

(2) A qualified oral surgeon who is a member of the medical staff of a hospital and who admits a patient to the hospital for oral or maxillofacial surgery may take the history and perform a physical examination of the patient if the patient has no known medical problems.

(3) This section does not affect hospital staff privileges of any hospital and may not be construed to require that any specific privilege, including taking a history or performing a physical examination, be extended or not extended to any oral surgeon.

History: En. Sec. 1, Ch. 313, L. 1987.

CHAPTER 5

OSTEOPATHY

Part 1 — General

37-5-101. Definitions — practice of osteopathy.
37-5-102. Osteopathy not practice of medicine.

Part 2 — Board of Osteopathic Physicians (Repealed. Sec. 6, Ch. 87, L. 1981)

Part 3 — Licensing

37-5-301. Qualifications for licensure — application — reexamination.
37-5-302. Examination — examination fee.
37-5-303. Repealed.
37-5-304. Repealed.
37-5-305. Limitations on certificate — prescribing drugs — surgery.
37-5-306. Repealed.
37-5-307. Renewal fee.
37-5-308 through 37-5-310 reserved.
37-5-311. Repealed.
37-5-312. Penalty for practicing osteopathy without a license.

Chapter Cross-References

Doctor-patient privilege, 26-1-805.

Professional service corporations, Title 35, ch. 4.

General provisions relating to health care practitioners, Title 37, ch. 2.

Validity of consent to medical treatment, Title 41, ch. 1, part 4.

Osteopaths to report child abuse, 41-3-201.

Health care information, Title 50, ch. 16.

Part 1

General

37-5-101. Definitions — practice of osteopathy. (1) Unless the context requires otherwise, in this chapter the following definitions apply:

(a) "Board" means the board of medical examiners provided for in 2-15-1841.

(b) "Department" means the department of commerce provided for in Title 2, chapter 15, part 18.

(2) Every person is "practicing osteopathy" within the meaning of this chapter who:

(a) appends to or uses in connection with his or her name the words "doctor of osteopathy, diplomate of osteopathy, osteopath, osteopathist, osteopathic practitioner, osteopathic physician", or words of like import or any abbreviation thereof or the letters "D.O."; or

(b) professes publicly to or who, either on his own behalf, in his own name or in his trade name, or in behalf of any other person, corporation, association, partnership (as manager, bookkeeper, practitioner, or agent), treats, cures, alleviates, or relieves any ailment or disease of either mind or body or cures or relieves any fracture or misplacement or abnormal condition or bodily injury or deformity by any treatment or manipulation or method of manipulating a human body or any of its limbs, muscles, or parts by the use of the hands or mechanical appliances in an effort or attempt to relieve any pressure, obstruction, misplacement, or defect in any bone, muscle, ligament, nerve, vessel, organ, or part of the body, after having received or with the intent or expectation of receiving therefor, either directly or indirectly, any bonus, gift, or compensation whatsoever; provided, however, that nothing in this section restrains or restricts any legally licensed physician or surgeon in the practice of his profession.

History: (1)En. 66-1401.1 by Sec. 141, Ch. 350, L. 1974; Sec. 66-1401.1, R.C.M. 1947; (2)En. Sec. 12, Ch. 51, L. 1905; amd. Sec. 2, Ch. 112, L. 1907; re-en. Sec. 1605, Rev. C. 1907; re-en. Sec. 3136, R.C.M. 1921; re-en. Sec. 3136, R.C.M. 1935; Sec. 66-1412, R.C.M. 1947; R.C.M. 1947, 66-1401.1, 66-1412; amd. Sec. 4, Ch. 22, L. 1979; amd. Sec. 1, Ch. 87, L. 1981.

Cross-References

Chiropractic not practice of osteopathy, 37-12-102.

37-5-102. Osteopathy not practice of medicine. The system, method, or science of treating diseases of the human body commonly known as osteopathy is not the practice of medicine or surgery within the meaning of chapter 3, parts 1 through 3, and is not subject to the provisions of those parts.

History: En. Sec. 11, p. 51, L. 1901; rep. and re-en. Sec. 13, Ch. 51, L. 1905; re-en. Sec. 1606, Rev. C. 1907; re-en. Sec. 3137, R.C.M. 1921; re-en. Sec. 3137, R.C.M. 1935; amd. Sec. 7, Ch. 101, L. 1977; R.C.M. 1947, 66-1413; amd. Sec. 5, Ch. 22, L. 1979.

Cross-References

Exemptions from physician's licensing requirements, 37-3-103.

Part 2

Board of Osteopathic Physicians (Repealed. Sec. 6, Ch. 87, L. 1981)

Part Compiler's Comments

Histories of Repealed Sections:

37-5-201. En. Sec. 2, p. 48, L. 1901; rep. and re-en. Sec. 2, Ch. 51, L. 1905; re-en. Sec. 1595, Rev. C. 1907; re-en. Sec. 3126, R.C.M. 1921; re-en. Sec. 3126, R.C.M. 1935; amd. Sec. 142, Ch. 350, L. 1974; R.C.M. 1947, 66-1402.

37-5-202. En. Sec. 10, p. 51, L. 1901; rep. and re-en. Sec. 10, Ch. 51, L. 1905; re-en. Sec. 1603, Rev. C. 1907; re-en. Sec. 3134, R.C.M. 1921; re-en. Sec. 3134, R.C.M. 1935; amd. Sec. 146, Ch. 147, L. 1963; amd. Sec. 2, Ch. 206, L. 1967; amd. Sec. 24, Ch. 93, L. 1969; amd. Sec. 146, Ch. 350, L. 1974; amd. Sec. 33, Ch. 439, L. 1975; R.C.M. 1947, 66-1410; amd. Sec. 10, Ch. 474, L. 1981.

Part 3
Licensing

Part Cross-References

Licensing to follow contested case procedure, 2-4-631.

Suspension of license fees for persons in military service, 10-1-605.

Duty of Board to adopt and enforce licensing and certification rules, 37-1-131.

Licensing boards to establish fees commensurate with costs, 37-1-134.

Licensure of criminal offenders, Title 37, ch. 1, part 2.

Nondiscrimination in licensing, 49-3-204.

37-5-301. Qualifications for licensure — application — reexamination. (1) It is unlawful for a person to practice osteopathy in this state without a license from the department. An applicant applying for licensure shall be a person of good moral character. An applicant shall present evidence to the board that he has completed the following educational and professional requirements:

(a) 4 years of high school or its scholastic equivalent;

(b) at least 2 years' preprofessional college education in an accredited college or university; and

(c) 4 years' professional education in an osteopathic college conforming to the minimum educational standards for osteopathic colleges established by the American osteopathic association and which is approved by the board.

(2) Application shall be made on forms prescribed by the board and furnished by the department.

(3) An applicant who fails the examination is entitled to a second examination without charge.

History: En. Sec. 3, p. 49, L. 1901; rep. and re-en. Sec. 3, Ch. 51, L. 1905; re-en. Sec. 1956, Rev. C. 1907; amd. Sec. 1, Ch. 124, L. 1919; re-en. Sec. 3127, R.C.M. 1921; amd. Sec. 1, Ch. 79, L. 1925; re-en. Sec. 3127, R.C.M. 1935; amd. Sec. 1, Ch. 108, L. 1953; amd. Sec. 1, Ch. 206, L. 1967; amd. Sec. 143, Ch. 350, L. 1974; R.C.M. 1947, 66-1403(1).

Cross-References

Standardized forms, 37-1-104.

Reporting disciplinary actions against licensees, 37-1-105.

Licensing investigation and review — record access, 37-1-135.

Grounds for disciplinary action as grounds for license denial — conditions to new licenses, 37-1-137.

37-5-302. Examination — examination fee. (1) A person commencing the practice of osteopathy in this state, in any of its branches, shall apply to the department for a license to do so, and the applicant, at the time and place designated by the board, shall submit to an examination in the following subjects: anatomy, physiology, chemistry, pathology, bacteriology, gynecology, obstetrics, and theory and practice of osteopathy and other subjects taught in well-regulated and recognized schools of osteopathy and considered advisable by the board and shall present evidence of having actually attended, as required in 37-5-301, a legally authorized and regularly conducted school of osteopathy recognized by the board.

(2) Examination papers on subjects peculiar to osteopathy shall be graded by the department, subject to 37-1-101. The examination shall be scientific and practical, but of sufficient severity to test the candidate's fitness to practice osteopathy.

(3) After examination the department shall issue a license to practice osteopathy in this state to applicants who pass the examination, which license

shall be granted by not less than two members of the board, attested by the board's seal.

(4) The fee for the examination and license shall be prescribed by the board.

History: En. Sec. 5, p. 49, L. 1901; rep. and re-en. Sec. 5, Ch. 51, L. 1905; re-en. Sec. 1598, Rev. C. 1907; re-en. Sec. 3129, R.C.M. 1921; re-en. Sec. 3129, R.C.M. 1935; amd. Sec. 2, Ch. 108, L. 1953; amd. Sec. 145, Ch. 147, L. 1963; amd. Sec. 145, Ch. 350, L. 1974; R.C.M. 1947, 66-1405; amd. Sec. 2, Ch. 87, L. 1981; amd. Sec. 10, Ch. 345, L. 1981.

37-5-303. Repealed. Sec. 128, Ch. 429, L. 1995.

History: En. Sec. 11, Ch. 51, L. 1905; re-en. Sec. 1604, Rev. C. 1907; re-en. Sec. 3135, R.C.M. 1921; re-en. Sec. 3135, R.C.M. 1935; amd. Sec. 147, Ch. 350, L. 1974; R.C.M. 1947, 66-1411.

37-5-304. Repealed. Sec. 128, Ch. 429, L. 1995.

History: En. Sec. 4, p. 49, L. 1901; rep. and re-en. Sec. 4, Ch. 51, L. 1905; re-en. Sec. 1597, Rev. C. 1907; re-en. Sec. 3128, R.C.M. 1921; re-en. Sec. 3128, R.C.M. 1935; amd. Sec. 144, Ch. 350, L. 1974; R.C.M. 1947, 66-1404.

37-5-305. Limitations on certificate — prescribing drugs — surgery. The certificates provided for in this chapter do not authorize the holders thereof to prescribe or use drugs in the practice of osteopathy or to perform major or operative surgery. A person holding a certificate under this chapter who prescribes or uses drugs in the practice of osteopathy or who performs major or operative surgery is guilty of a misdemeanor, provided that nothing in this chapter may be construed to prohibit any legalized osteopath in this state from practicing major or operative surgery after having passed a satisfactory examination in surgery before the Montana board of medical examiners.

History: En. Sec. 6, p. 50, L. 1901; rep. and re-en. Sec. 6, Ch. 51, L. 1905; re-en. Sec. 1599, Rev. C. 1907; re-en. Sec. 3130, R.C.M. 1921; re-en. Sec. 3130, R.C.M. 1935; amd. Sec. 6, Ch. 101, L. 1977; R.C.M. 1947, 66-1406.

Cross-References

Licensing of physicians, Title 37, ch. 3, part 3.

Penalty when none specified, 46-18-212.

37-5-306. Repealed. Sec. 4, Ch. 66, L. 1981.

History: En. Sec. 7, p. 50, L. 1901; rep. and re-en. Sec. 7, Ch. 51, L. 1905; re-en. Sec. 1600, Rev. C. 1907; re-en. Sec. 3131, R.C.M. 1921; re-en. Sec. 3131, R.C.M. 1935; R.C.M. 1947, 66-1407.

37-5-307. Renewal fee. (1) A person holding a certificate to practice under this chapter and who is in active practice in this state shall, on or before the date set by department rule, pay a renewal fee prescribed by the board to the department. At least 2 weeks before the renewal date, the department shall send a notice to each person holding a valid certificate to practice under this chapter and from whom a fee is due stating that the fee is due.

(2) The certificate to practice under this chapter automatically becomes void when the renewal fee is not paid at the time named. However, the board may reinstate a practitioner whose certificate has lapsed on payment of back renewal fees or on payment of a maximum fee prescribed by the board if the lapsed fees exceed the maximum fee.

History: En. Sec. 3, p. 49, L. 1901; rep. and re-en. Sec. 3, Ch. 51, L. 1905; re-en. Sec. 1956, Rev. C. 1907; amd. Sec. 1, Ch. 124, L. 1919; re-en. Sec. 3127, R.C.M. 1921; amd. Sec. 1, Ch. 79, L. 1925; re-en. Sec. 3127, R.C.M. 1935; amd. Sec. 1, Ch. 108, L. 1953; amd. Sec.

1, Ch. 206, L. 1967; amd. Sec. 143, Ch. 350, L. 1974; R.C.M. 1947, 66-1403(2), (3); amd. Sec. 11, Ch. 345, L. 1981; amd. Sec. 31, Ch. 429, L. 1995.

37-5-308 through 37-5-310 reserved.

37-5-311. Repealed. Sec. 128, Ch. 429, L. 1995.

History: En. Sec. 9, p. 51, L. 1901; rep. and re-en. Sec. 9, Ch. 51, L. 1905; re-en. Sec. 1602, Rev. C. 1907; re-en. Sec. 3133, R.C.M. 1921; re-en. Sec. 3133, R.C.M. 1935; R.C.M. 1947, 66-1409.

37-5-312. Penalty for practicing osteopathy without a license. Any person practicing osteopathy in this state without first obtaining a license herein provided for or contrary to the provisions of this chapter or who, for the purpose of obtaining such license, shall falsely represent himself or herself to be the holder of a diploma as herein provided shall be deemed guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not more than $1,000 or less than $250 or by imprisonment in the county jail not exceeding 1 year or less than 90 days or by both fine and imprisonment for each and every such offense. It shall be the duty of the respective county attorneys to prosecute violations of this chapter.

History: En. Sec. 8, p. 51, L. 1901; rep. and re-en. Sec. 8, Ch. 51, L. 1905; amd. Sec. 1, Ch. 112, L. 1907; re-en. Sec. 1601, Rev. C. 1907; re-en. Sec. 3132, R.C.M. 1921; re-en. Sec. 3132, R.C.M. 1935; R.C.M. 1947, 66-1408.

Cross-References

Prosecutorial duties of County Attorney, 7-4-2712.

Duties of County Attorney relating to state matters, 7-4-2716.

CHAPTER 6

PODIATRY

Part 1 — General

37-6-101. Definitions.
37-6-102. Scope of practice.
37-6-103. Application of chapter.
37-6-104. Construction of chapter.
37-6-105. Administration of drugs.
37-6-106. Rulemaking authority.
37-6-107. Certification required for ankle surgery — places of performance of surgery.

Part 2 — Board of Podiatry Examiners (Repealed. Sec. 10, Ch. 470, L. 1981)

Part 3 — Licensing

37-6-301. License required for practice.
37-6-302. Qualifications for licensure.
37-6-303. Examination — subjects — fees — reexamination.
37-6-304. Designations on license — recording — renewal — display.
37-6-305. Deposit of moneys collected.
37-6-306 through 37-6-309 reserved.
37-6-310. Repealed.
37-6-311. Refusal or revocation of license — investigation.
37-6-312. Penalty.

Chapter Cross-References

Professional service corporations, Title 35, ch. 4.

General provisions relating to health care practitioners, Title 37, ch. 2.

Podiatrists to report child abuse, 41-3-201.

Health care information, Title 50, ch. 16.

Duty of podiatrist to report violation of Montana Elder and Persons With Developmental Disabilities Abuse Prevention Act, 52-3-811.

Part 1
General

37-6-101. Definitions. Unless the context requires otherwise, in this chapter, the following definitions apply:

(1) "Board" means the board of medical examiners provided for in 2-15-1841.

(2) "Department" means the department of commerce provided for in Title 2, chapter 15, part 18.

(3) "Podiatrist" means a physician or surgeon of the foot and ankle, licensed to diagnose and treat ailments of the human functional foot and ankle.

(4) "Podiatry" means the diagnosis and treatment of ailments of the human functional foot and ankle as provided in 37-6-102.

History: En. Sec. 1, Ch. 2, L. 1923; re-en. Sec. 3154.1, R.C.M. 1935; amd. Sec. 1, Ch. 218, L. 1939; amd. Sec. 55, Ch. 350, L. 1974; R.C.M. 1947, 66-601; amd. Sec. 3, Ch. 274, L. 1981; amd. Sec. 2, Ch. 470, L. 1981; amd. Sec. 1, Ch. 288, L. 1987; amd. Sec. 1, Ch. 484, L. 1989; amd. Sec. 1, Ch. 402, L. 1995.

37-6-102. Scope of practice. (1) A podiatrist may diagnose and treat ailments of the human functional foot and ankle by all systems and means. The functional foot is the anatomical foot and any muscle, tendon, ligament, or other soft tissue structure that is directly attached to the anatomical foot and that impacts on or affects the foot or foot function. The ankle is the articulation between the talus, tibia, and fibula and their related soft tissue structures.

(2) A podiatrist may not administer any anesthetic other than a local anesthetic.

History: En. Sec. 2, Ch. 2, L. 1923; re-en. Sec. 3154.2, R.C.M. 1935; amd. Sec. 2, Ch. 218, L. 1939; amd. Sec. 56, Ch. 350, L. 1974; R.C.M. 1947, 66-602(part); amd. Sec. 2, Ch. 288, L. 1987; amd. Sec. 2, Ch. 484, L. 1989; amd. Sec. 2, Ch. 402, L. 1995.

37-6-103. Application of chapter. This chapter shall not apply to any physician licensed to practice his profession in this state or to surgeons of the United States army, navy, and/or public health service when in actual performance of their duties.

History: En. Sec. 10, Ch. 2, L. 1923; re-en. Sec. 3154.10, R.C.M. 1935; amd. Sec. 7, Ch. 218, L. 1939; R.C.M. 1947, 66-610.

Cross-References

Exemptions from physician's licensing requirements, 37-3-103.

37-6-104. Construction of chapter. Nothing in this chapter shall be construed as prohibiting the fitting, recommending, advertising, adjusting, or sale of corrective shoes, arch supports, or similar mechanical appliances, or foot remedies by retail dealers or manufacturers.

History: En. Sec. 8, Ch. 218, L. 1939; R.C.M. 1947, 66-611.

37-6-105. Administration of drugs. A licensed podiatrist may administer and prescribe drugs in accordance with 37-2-101 as a "medical practitioner".

History: En. Sec. 3, Ch. 470, L. 1981.

Cross-References

Dispensing of drugs, Title 37, ch. 2, part 1.

Regulation of prescriptions, Title 37, ch. 7, part 4.

Drug product selection, Title 37, ch. 7, part 5.

Dangerous drugs, Title 45, ch. 9.

Controlled substances, Title 50, ch. 32.

37-6-106. Rulemaking authority. The board may adopt rules to carry out the provisions of this chapter. Rules adopted by the board must be fair, impartial, and nondiscriminatory.

History: En. Sec. 6, Ch. 540, L. 1991.

37-6-107. Certification required for ankle surgery — places of performance of surgery. (1) Notwithstanding any other provisions in this title, a podiatrist may not perform surgical treatments of the ankle unless certified to do so by the board. The board shall certify a podiatrist whom it considers qualified by education, training, and experience or who is certified by the American board of podiatric surgery.

(2) A surgical treatment of the ankle performed in accordance with subsection (1) must be performed in a hospital or outpatient center for surgical services licensed under Title 50.

History: En. Secs. 3, 4, Ch. 402, L. 1995; amd. Sec. 3, Ch. 98, L. 1999.

Compiler's Comments

1999 Amendment: Chapter 98 in (2) substituted "outpatient center for surgical services" for "ambulatory surgical center". Amendment effective October 1, 1999.

Applicability: Section 7, Ch. 98, L. 1999, provided: "[This act] applies to health care facility licenses or certificates of need issued pursuant to Title 50, chapter 5, after October 1, 1999."

Part 2

Board of Podiatry Examiners (Repealed. Sec. 10, Ch. 470, L. 1981)

Part Compiler's Comments

Histories of Repealed Sections:

37-6-201. En. Sec. 8, Ch. 2, L. 1923; re-en. Sec. 3154.8, R.C.M. 1935; amd. Sec. 132, Ch. 147, L. 1963; amd. Sec. 62, Ch. 350, L. 1974; amd. Sec. 27, Ch. 439, L. 1975; amd. Sec. 3, Ch. 176, L. 1977; R.C.M. 1947, 66-608; amd. Sec. 11, Ch. 474, L. 1981.

Part 3

Licensing

Part Cross-References

Licensing to follow contested case procedure, 2-4-631.

Suspension of license fees for persons in military service, 10-1-605.

Recognition of out-of-state licenses during disaster or emergency, 10-3-204.

Duty of Department to administer and grade examinations, 37-1-101.

Reporting disciplinary actions against licensees, 37-1-105.

Duty of Board to adopt and enforce licensing and certification rules, 37-1-131.

Licensing boards to establish fees commensurate with costs, 37-1-134.

Licensing investigation and review — record access, 37-1-135.

Grounds for disciplinary action as grounds for license denial — conditions to new licenses, 37-1-137.

Licensure of criminal offenders, Title 37, ch. 1, part 2.

Nondiscrimination in licensing, 49-3-204.

37-6-301. License required for practice. It is unlawful for a person to profess to be a podiatrist, to practice or assume the duties incident to podiatry, or to advertise in any form or hold himself out to the public as a podiatrist, or in a sign or advertisement to use the word "podiatrist" or "foot correctionist" or any other term, terms, or letters indicating to the public that he is holding himself out as a podiatrist or foot correctionist in any manner, without first obtaining from the board a license authorizing the practice of podiatry in this state, except under this chapter.

History: En. Sec. 2, Ch. 2, L. 1923; re-en. Sec. 3154.2, R.C.M. 1935; amd. Sec. 2, Ch. 218, L. 1939; amd. Sec. 56, Ch. 350, L. 1974; R.C.M. 1947, 66-602(part); amd. Sec. 3, Ch. 288, L. 1987.

37-6-302. Qualifications for licensure. (1) A person who wishes to begin the practice of podiatry in this state shall make application, on a form authorized by the board and furnished by the department, for a license to practice podiatry.

(2) A person may not be granted a license to practice podiatry in this state unless the person:

(a) is of good moral character as determined by the board;

(b) is a graduate of a school of podiatry approved by the board;

(c) has completed at least 1 year of postgraduate training or has had equivalent experience or training approved by the board;

(d) has made a personal appearance before the board;

(e) has passed an examination administered by the national board of podiatry examiners and is a diplomate of the national board of podiatry examiners; and

(f) has obtained a score of at least 75% on an examination administered by the board.

(3) The board may waive the requirements described in subsections (2)(d) and (2)(f).

History: En. Sec. 3, Ch. 2, L. 1923; re-en. Sec. 3154.3, R.C.M. 1935; amd. Sec. 3, Ch. 218, L. 1939; amd. Sec. 131, Ch. 147, L. 1963; amd. Sec. 1, Ch. 168, L. 1971; amd. Sec. 1, Ch. 288, L. 1973; amd. Sec. 57, Ch. 350, L. 1974; amd. Sec. 1, Ch. 96, L. 1975; amd. Sec. 1, Ch. 176, L. 1977; R.C.M. 1947, 66-603; amd. Sec. 12, Ch. 345, L. 1981; amd. Sec. 4, Ch. 470, L. 1981; amd. Sec. 4, Ch. 288, L. 1987; amd. Sec. 32, Ch. 429, L. 1995.

37-6-303. Examination — subjects — fees — reexamination. (1) A person who is not exempt from examination and who desires a license to practice podiatry must be examined in the following subjects: anatomy, chemistry, dermatology, physical diagnosis, materia medica, pathology, physiology, therapeutics, orthopedics, histology, bacteriology, pharmacy, neurology, surgery, shoe therapy, physiotherapy, roentgenology, and podiatric medicine. The minimum passing score is 70% for each subject tested and an average of 75% for all subjects tested.

(2) An examination and license fee prescribed by the board must be paid to the department.

(3) An applicant failing the examination and being refused a license is entitled within 6 months of the refusal to a reexamination, but one reexamination exhausts the privilege under the original examination. An additional fee must be paid to the department for a reexamination.

History: **En. Sec. 4, Ch. 2, L. 1923; re-en. Sec. 3154.4, R.C.M. 1935; amd. Sec. 4, Ch. 218, L. 1939; amd. Sec. 58, Ch. 350, L. 1974; R.C.M. 1947, 66-604; amd. Sec. 13, Ch. 345, L. 1981; amd. Sec. 5, Ch. 470, L. 1981; amd. Sec. 5, Ch. 288, L. 1987; amd. Sec. 33, Ch. 429, L. 1995.**

37-6-304. Designations on license — recording — renewal — display. (1) A license issued under this chapter is designated as a "registered podiatrist's license" or a "temporary podiatrist's license".

(2) Licenses must be recorded by the department the same as other medical licenses.

(3) Licenses must be renewed on a date set by department rule.

(4) A license renewal fee set by the board must be paid on a date set by department rule.

(5) The department shall mail renewal notices no later than 60 days prior to the renewal date.

(6) If the renewal fee is not paid on or before the renewal date, the board may revoke the licensee's certificate after giving 30 days' notice to the licensee. A certified letter addressed to the delinquent licensee's last-known address as it appears on the records of the department constitutes notice of intent to revoke the certificate. A certificate may not be revoked for nonpayment of a renewal fee if the licensee pays the renewal fee plus a penalty prescribed by the board on or before the date fixed for revocation.

(7) A license revoked for nonpayment of the renewal fee may be reissued only on original application and payment of an additional fee prescribed by the board.

(8) Licenses must be conspicuously displayed by podiatrists at their offices or other places of practice.

History: **En. Sec. 5, Ch. 2, L. 1923; re-en. Sec. 3154.5, R.C.M. 1935; amd. Sec. 5, Ch. 218, L. 1939; amd. Sec. 59, Ch. 350, L. 1974; amd. Sec. 3, Ch. 533, L. 1977; R.C.M. 1947, 66-605; amd. Sec. 2, Ch. 66, L. 1981; amd. Sec. 14, Ch. 345, L. 1981; amd. Sec. 6, Ch. 288, L. 1987; amd. Sec. 2, Ch. 540, L. 1991; amd. Sec. 34, Ch. 429, L. 1995; amd. Sec. 9, Ch. 492, L. 1997.**

Cross-References

Prohibition on distribution or sale of mailing lists, 2-6-109.

Duties of County Clerk, 7-4-2611.

Fees of County Clerk, 7-4-2631.

37-6-305. Deposit of moneys collected. All fees shall be collected by the department and deposited in the state special revenue fund for the use of the board, subject to 37-1-101(6).

History: **En. Sec. 7, Ch. 2, L. 1923; re-en. Sec. 3154.7, R.C.M. 1935; amd. Sec. 130, Ch. 147, L. 1963; amd. Sec. 61, Ch. 350, L. 1974; amd. Sec. 1, Ch. 101, L. 1977; amd. Sec. 2, Ch. 176, L. 1977; R.C.M. 1947, 66-607; amd. Sec. 1, Ch. 277, L. 1983; amd. Sec. 8, Ch. 288, L. 1987.**

37-6-306 through 37-6-309 reserved.

37-6-310. Repealed. Sec. 128, Ch. 429, L. 1995.

History: **En. Sec. 9, Ch. 288, L. 1987; amd. Sec. 12, Ch. 619, L. 1993.**

37-6-311. Refusal or revocation of license — investigation. (1) After notice and opportunity for a hearing, the board may deny, revoke, or refuse to renew a license to practice podiatry if the consensus of the board is that an applicant is not of good moral character or has engaged in unprofessional conduct.

(2) The department may investigate whenever it is brought to its attention that a licensed podiatrist:

(a) is mentally or physically unable to engage safely in the practice of podiatry;

(b) has procured the license by fraud, misrepresentation, or through error;

(c) has been declared incompetent by a court of competent jurisdiction and has not later been lawfully declared competent;

(d) has a condition that impairs the licensee's intellect or judgment to the extent that it incapacitates the licensee in the safe performance of professional duties;

(e) has been found guilty of unprofessional conduct;

(f) has practiced podiatry while the license was suspended or revoked;

(g) has had the license suspended or revoked by any licensing authority for reasons other than nonpayment of fees; or

(h) while under probation has violated its terms.

(3) The investigation must be for the purpose of determining the probability that the alleged conditions exist or that the alleged offenses were committed. Upon order of the board, the investigation may include requiring the person to submit to a physical examination or a mental examination, or both, by a physician or physicians selected by the board if it appears to be in the best interest of the public that this evaluation be secured. The board may examine the hospital records and reports of a licensee as part of the examination, and copies must be released to the board on written request.

(4) If a person holding a license to practice podiatry under this chapter is by a final order or adjudication of a court of competent jurisdiction determined to be mentally incompetent, to be addicted to the use of narcotics, or to have been committed pursuant to 53-21-127, the license may be suspended by the board. The suspension continues until the licensee is found by the court to be restored to reason or cured or until the licensee is discharged as restored to reason or cured and the licensee's professional competence has been proved to the satisfaction of the board.

History: En. Sec. 6, Ch. 2, L. 1923; re-en. Sec. 3154.6, R.C.M. 1935; amd. Sec. 6, Ch. 218, L. 1939; amd. Sec. 60, Ch. 350, L. 1974; R.C.M. 1947, 66-606; amd. Sec. 6, Ch. 22, L. 1979; amd. Sec. 7, Ch. 288, L. 1987; amd. Sec. 45, Ch. 83, L. 1989; amd. Sec. 3, Ch. 540, L. 1991; amd. Sec. 35, Ch. 429, L. 1995; amd. Sec. 8, Ch. 490, L. 1997.

Cross-References

Application of contested case procedure to denial of license, 2-4-631.

Unfair trade practices and consumer protection, Title 30, ch. 14.

Duty of Department to investigate unprofessional conduct, 37-1-101.

Reporting disciplinary actions against licensees, 37-1-105.

Duties of Director in investigation of unethical conduct, 37-1-121.

Duty of Board to adopt rules on conduct, 37-1-131.

Licensing investigation and review — record access, 37-1-135.

Disciplinary authority of boards — injunctions, 37-1-136.

37-6-312. Penalty. Any person who shall knowingly violate any of the provisions of this chapter is guilty of a misdemeanor and on conviction shall be fined not less than $250 or more than $1,000 or imprisoned in the county jail for not less than 90 days or more than 1 year, or both fined and imprisoned.

History: En. Sec. 9, Ch. 2, L. 1923; re-en. Sec. 3154.9, R.C.M. 1935; R.C.M. 1947, 66-609; amd. Sec. 6, Ch. 470, L. 1981.

CHAPTER 7

PHARMACY

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Chapter Cross-References

Professional service corporations, Title 35, ch. 4.

General provisions relating to health care practitioners, Title 37, ch. 2.

Use of diagnostic drugs by optometrist not prohibited, 37-10-103.

Dangerous drugs, Title 45, ch. 9.

Controlled substances, Title 50, ch. 32.

Part 1
General

37-7-101. Definitions. Unless the context requires otherwise, in parts 1 through 3 of this chapter, the following definitions apply:

(1) "Board" means the board of pharmacy provided for in 2-15-1843.

(2) "Chemical" means medicinal or industrial substances, whether simple, compound, or obtained through the process of the science and art of chemistry, whether of organic or inorganic origin.

(3) "Commercial purposes" means the ordinary purposes of trade, agriculture, industry, and commerce, exclusive of the practices of medicine and pharmacy.

(4) "Department" means the department of commerce provided for in Title 2, chapter 15, part 18.

(5) (a) "Drug" means:

(i) articles recognized in the official United States Pharmacopoeia/National Formulary or a supplement;

(ii) articles intended for use in diagnosis, cure, mitigation, treatment, or prevention of disease in people or other animals;

(iii) articles, other than food, intended to affect the structure or function of the body of an individual or other animal; and

(iv) articles intended for use as a component of an article specified in subsection (5)(a)(i), (5)(a)(ii), or (5)(a)(iii).

(b) Drug does not include devices or their components, parts, or accessories.

(6) "Intern" means a natural person licensed by the department to prepare, compound, dispense, and sell drugs, medicines, chemicals, and poisons under the supervision of a registered and licensed pharmacist.

(7) "Medicine" means a remedial agent which has the property of curing, preventing, treating, or mitigating diseases or which is used for this purpose.

(8) "Person" includes an individual, partnership, corporation, or association.

(9) "Pharmacist" means a natural person licensed by the department to prepare, compound, dispense, and sell drugs, medicines, chemicals, and poisons and who may affix to the person's name the term "R.Ph.".

(10) "Pharmacy" means an established place registered by the department of commerce in which prescriptions, drugs requiring a prescription, medicines, chemicals, and poisons are compounded, dispensed, vended, or sold.

(11) "Pharmacy technician or auxiliary" means an individual who assists a pharmacist in the practice of pharmacy pursuant to an approved utilization plan.

(12) "Poison" means a substance which, when introduced into the system, either directly or by absorption, produces violent, morbid, or fatal changes or which destroys living tissue with which it comes in contact.

(13) "Prescription" means an order given individually for the person for whom prescribed, directly from the prescriber to the furnisher or indirectly to the furnisher, by means of an order signed by the prescriber and bearing the name and address of the prescriber, the prescriber's license classification, the name of the patient, the name and the quantity of the drug or drugs prescribed, the directions for use and the date of its issue. These stipulations apply to both written and telephoned prescriptions.

(14) "Utilization plan" means a plan under which a pharmacist may use the services of a pharmacy technician or auxiliary in the practice of pharmacy to perform tasks that:

(a) do not require the exercise of the pharmacist's independent professional judgment; and

(b) are verified by the pharmacist.

(15) "Wholesale" means a sale for the purpose of resale.

History: En. Sec. 2, Ch. 175, L. 1939; amd. Sec. 1, Ch. 33, L. 1951; amd. Sec. 2, Ch. 241, L. 1971; amd. Sec. 148, Ch. 350, L. 1974; amd. Sec. 1, Ch. 439, L. 1977; R.C.M. 1947, 66-1502; amd. Sec. 7, Ch. 22, L. 1979; amd. Sec. 3, Ch. 379, L. 1981; amd. Sec. 1, Ch. 247, L. 1983; amd. Sec. 1, Ch. 219, L. 1991; amd. Sec. 36, Ch. 429, L. 1995.

37-7-102. Practice subject to regulation. The practice of pharmacy is a professional practice affecting the public health, safety, and welfare and is subject to regulation and control in the public interest.

History: **En. Sec. 647, Pol. C. 1895; re-en. Sec. 1629, Rev. C. 1907; re-en. Sec. 8, Ch. 134, L. 1915; re-en. Sec. 3177, R.C.M. 1921; re-en. Sec. 3177, R.C.M. 1935; amd. Sec. 7, Ch. 175, L. 1939; amd. Sec. 1, Ch. 70, L. 1957; amd. Sec. 5, Ch. 241, L. 1971; amd. Sec. 153, Ch. 350, L. 1974; amd. Sec. 2, Ch. 439, L. 1977; R.C.M. 1947, 66-1507(part).**

37-7-103. Exemptions. Subject only to 37-7-401 and 37-7-402, this chapter does not:

(1) subject a person who is licensed in this state to practice medicine, dentistry, or veterinary medicine to inspection by the board, prevent the person from compounding or using drugs, medicines, chemicals, or poisons in the person's practice, or prevent a person who is licensed to practice medicine from furnishing to a patient drugs, medicines, chemicals, or poisons that the person considers proper in the treatment of the patient;

(2) prevent the sale of drugs, medicines, chemicals, or poisons at wholesale;

(3) prevent the sale of drugs, chemicals, or poisons either at wholesale or retail for use for commercial purposes or in the arts or changes any of the provisions of this code relating to the sale of insecticides and fungicides, and does not prevent the sale of common household preparations and other drugs if the stores selling them are licensed under the terms of this chapter;

(4) apply to or interfere with manufacture, wholesaling, vending, or retailing of flavoring extracts, toilet articles, cosmetics, perfumes, spices, and other commonly used household articles of a chemical nature for use for nonmedicinal purposes;

(5) prevent a registered nurse employed by a family planning clinic under contract with the department of public health and human services from dispensing factory prepackaged oral contraceptives if the dispensing is in accordance with a physician's written protocol specifying the circumstances under which dispensing is appropriate and is in accordance with the board of pharmacy's requirements for labeling, storage, and recordkeeping of drugs.

History: **En. Sec. 14, Ch. 175, L. 1939; amd. Sec. 10, Ch. 101, L. 1977; R.C.M. 1947, 66-1525; amd. Sec. 2, Ch. 472, L. 1989; amd. Sec. 59, Ch. 418, L. 1995; amd. Sec. 88, Ch. 546, L. 1995.**

Cross-References

Licensing of physicians, Title 37, ch. 3, part 3.

Licensing of dentists, Title 37, ch. 4, part 3.

Licensing — veterinary medicine, Title 37, ch. 18, part 3.

Pesticides, Title 80, ch. 8.

37-7-104. Qualifications of employee hired to assist board. A person hired by the department to enter and inspect an establishment under this chapter; to examine the books of a manufacturer, druggist, storekeeper, wholesaler, pharmacist, or intern; to assist in a prosecution under this chapter; and to assist the board in supervising internships, reciprocity agreements, professional correspondence, and examinations shall be:

(1) a citizen of the United States and a resident of this state; and

(2) a pharmacist registered under this chapter, with at least 5 years of practical experience.

History: **En. 66-1521.1 by Sec. 158, Ch. 350, L. 1974; R.C.M. 1947, 66-1521.1; amd. Sec. 8, Ch. 22, L. 1979.**

Cross-References

Duties of Department, 37-1-101.

Part 2

Board of Pharmacy

Part Cross-References

Right to know, Art. II, sec. 9, Mont. Const.

Open meetings, Title 2, ch. 3, part 2.

Meeting defined, 2-3-202.

Allocation of boards for administrative purposes, 2-15-121.

Quasi-judicial boards, 2-15-124.

Board established, 2-15-1843.

Duties of Department, Director, and boards, Title 37, ch. 1, part 1.

Disrupting meeting as disorderly conduct, 45-8-101.

37-7-201. Organization — powers and duties. (1) The board shall meet at least once a year to transact its business. The board shall annually elect from its members a president, vice-president, and secretary.

(2) The board shall:

(a) regulate the practice of pharmacy in this state subject to this chapter;

(b) determine the minimum equipment necessary in and for a pharmacy;

(c) regulate, under therapeutic classification, the sale of drugs, medicines, chemicals, and poisons and their labeling;

(d) regulate the quality of drugs and medicines dispensed in this state, using the United States Pharmacopoeia/National Formulary or revisions thereof as the standards;

(e) request the department to enter and inspect, at reasonable times, places where drugs, medicines, chemicals, or poisons are sold, vended, given away, compounded, dispensed, or manufactured. It is a misdemeanor for a person to refuse to permit or otherwise prevent the department from entering these places and making an inspection.

(f) regulate the practice of interns under national standards;

(g) make rules for the conduct of its business;

(h) perform other duties and exercise other powers as this chapter requires;

(i) adopt and authorize the department to publish rules for carrying out and enforcing parts 1 through 3 of this chapter.

(3) The department shall:

(a) license, register, and examine, subject to 37-1-101, applicants whom the board considers qualified under this chapter;

(b) license pharmacies and certain stores under this chapter;

(c) license wholesale drug distributors;

(d) issue certificates of "certified pharmacy" under this chapter; and

(e) establish and collect license fees.

History: Ap. p. Sec. 644, Pol. C. 1895; re-en. Sec. 1626, Rev. C. 1907; re-en. Sec. 5, Ch. 134, L. 1915; re-en. Sec. 3174, R.C.M. 1921; re-en. Sec. 3174, R.C.M. 1935; amd. Sec. 4, Ch. 175, L. 1939; amd. Sec. 25, Ch. 93, L. 1969; amd. Sec. 3, Ch. 241, L. 1971; amd. Sec. 150, Ch. 350, L. 1974; Sec. 66-1504, R.C.M. 1947; Ap. p. Sec. 646, Pol. C. 1895; re-en. Sec. 1628, Rev. C. 1907; re-en. Sec. 7, Ch. 134, L. 1915; re-en. Sec. 3176, R.C.M. 1921; re-en. Sec. 3176, R.C.M. 1935; amd. Sec. 6, Ch. 175, L. 1939; amd. Sec. 1, Ch. 81, L. 1969; amd. Sec. 4, Ch. 168, L. 1971; amd. Sec. 4, Ch. 241, L. 1971; amd. Sec. 1, Ch. 71, L. 1974; amd. Sec. 152, Ch. 350, L. 1974; amd. Sec. 7, Ch. 533, L. 1977; Sec. 66-1506, R.C.M. 1947; R.C.M. 1947, 66-1504(1), (2)(a) thru (2)(f), (2)(h) thru (2)(j), (3), 66-1506(part); amd. Sec. 4, Ch. 379, L. 1981; amd. Sec. 1, Ch. 134, L. 1991.

37-7-202. Salaries and expenses of board members. Each member of the board shall receive compensation and travel expenses as provided for in 37-1-133.

History: En. Sec. 645, Pol. C. 1895; re-en. Sec. 1627, Rev. C. 1907; re-en. Sec. 6, Ch. 134, L. 1915; re-en. Sec. 3175, R.C.M. 1921; re-en. Sec. 3175, R.C.M. 1935; amd. Sec. 5, Ch. 175, L. 1939; amd. Sec. 26, Ch. 177, L. 1965; amd. Sec. 1, Ch. 82, L. 1969; amd. Sec. 1, Ch. 72, L. 1974; amd. Sec. 151, Ch. 350, L. 1974; amd. Sec. 34, Ch. 439, L. 1975; R.C.M. 1947, 66-1505; amd. Sec. 12, Ch. 474, L. 1981.

37-7-203. Repealed. Sec. 128, Ch. 429, L. 1995.

History: En. Sec. 4, Ch. 104, L. 1931; re-en. Sec. 3202.10, R.C.M. 1935; amd. Sec. 10, Ch. 175, L. 1939; amd. Sec. 8, Ch. 241, L. 1971; amd. Sec. 157, Ch. 350, L. 1974; R.C.M. 1947, 66-1521.

37-7-204. Posting of prescription drug prices — adoption of list by rule. If the board of pharmacy finds after a public hearing that the interests of consumers will be furthered by its action, the board shall annually adopt by rule a list of 20 prescription drugs frequently prescribed for outpatient dispensing in Montana. A licensed pharmacy, other than in a hospital or nursing home, that sells prescription drugs shall monthly post its prices for the drugs on the list adopted by the board. The list must show the drugs by brand name and retail price and by generic name and retail price.

History: En. Sec. 1, Ch. 307, L. 1993.

Part 3
Licensing

Part Cross-References

Licensing to follow contested case procedure, 2-4-631.

Suspension of license fees for persons in military service, 10-1-605.

Recognition of out-of-state licenses during disaster or emergency, 10-3-204.

Unfair trade practices and consumer protection, Title 30, ch. 14.

Duty of Department to administer and grade examinations and to investigate unprofessional conduct, 37-1-101.

Reporting disciplinary actions against licensees, 37-1-105.

Duties of Director in investigation of unethical conduct, 37-1-121.

Duty of Board to adopt and enforce licensing and certification rules, 37-1-131.

Licensing boards to establish fees commensurate with costs, 37-1-134.

Licensing investigation and review — record access, 37-1-135.

Disciplinary authority of Boards — injunctions, 37-1-136.

Grounds for disciplinary action as grounds for license denial conditions to new licenses, 37-1-137.

Licensure of criminal offenders, Title 37, ch. 1, part 2.

Nondiscrimination in licensing, 49-3-204.

License not required for sale of pesticides, 80-8-207.

37-7-301. Sale of drugs or medicines unlawful except as provided. Except as provided in 37-7-307 through 37-7-309, it is unlawful for a:

(1) person to compound, dispense, vend, or sell at retail drugs, medicines, chemicals, or poisons in any place other than a pharmacy, except as hereinafter provided;

(2) proprietor, owner, or manager of a pharmacy or any other person to permit the compounding or dispensing of prescriptions or the vending or selling at retail of drugs, medicines, chemicals, or poisons in any pharmacy except by a registered and licensed pharmacist or by an intern registered and licensed by the department and under the supervision of a registered and licensed pharmacist;

(3) person to assume or pretend to the title of pharmacist or intern unless the person has a license as such, issued and in force pursuant to parts 1 through 3 of this chapter;

(4) person other than a licensed and registered pharmacist or a licensed and registered intern under the supervision of a licensed and registered pharmacist to compound, dispense, vend, or sell at retail drugs, medicines, chemicals, or poisons except as provided in parts 1 through 3.

History: En. Sec. 640, Pol. C. 1895; re-en. Sec. 1622, Rev. C. 1907; re-en. Sec. 1, Ch. 134, L. 1915; re-en. Sec. 3170, R.C.M. 1921; re-en. Sec. 3170, R.C.M. 1935; amd. Sec. 1, Ch. 175, L. 1939; amd. Sec. 1, Ch. 241, L. 1971; R.C.M. 1947, 66-1501; amd. Sec. 9, Ch. 22, L. 1979; amd. Sec. 5, Ch. 379, L. 1981; amd. Sec. 2, Ch. 219, L. 1991.

37-7-302. Examination — qualifications — fees — reciprocity. (1) The department shall give reasonable notice of examinations by mail to known applicants. The department shall record the names of persons examined, together with the grounds on which the right of each to examination was claimed, and also the names of persons registered by examination or otherwise.

(2) The fee for an examination must be set by the board at a figure commensurate with costs. The fee may in the discretion of the board be returned to applicants not taking the examination.

(3) To be entitled to examination as a pharmacist, the applicant must be of good moral character and must have graduated and received the first professional undergraduate degree from the school of pharmacy of the university of Montana-Missoula or from an accredited pharmacy degree program that has been approved by the board. However, an applicant may not receive a registered pharmacist's license until the applicant has complied with the internship requirements established by the board.

(4) Each person licensed and registered under this chapter must receive from the department an appropriate certificate attesting the fact, which must be conspicuously displayed at all times in the place of business.

History: En. Sec. 646, Pol. C. 1895; re-en. Sec. 1628, Rev. C. 1907; re-en. Sec. 7, Ch. 134, L. 1915; re-en. Sec. 3176, R.C.M. 1921; re-en. Sec. 3176, R.C.M. 1935; amd. Sec. 6, Ch. 175, L. 1939; amd. Sec. 1, Ch. 81, L. 1969; amd. Sec. 4, Ch. 168, L. 1971; amd. Sec. 4, Ch. 241, L. 1971; amd. Sec. 1, Ch. 71, L. 1974; amd. Sec. 152, Ch. 350, L. 1974; amd. Sec. 7, Ch. 533, L. 1977; R.C.M. 1947, 66-1506(part); amd. Sec. 2, Ch. 341, L. 1981; amd. Sec. 15, Ch. 345, L. 1981; amd. Sec. 6, Ch. 379, L. 1981; amd. Sec. 3, Ch. 247, L. 1983; amd. Sec. 37, Ch. 429, L. 1995; amd. sec. 36, Ch. 308, L. 1995.

37-7-303. Renewal fee. A person licensed and registered by the department shall pay to the department on or before the license expiration date set by department rule a renewal of registration fee prescribed by the board. A default in the payment of a renewal fee after the date it is due increases the renewal fee as prescribed by the board. It is unlawful for a person who refuses or fails to pay the renewal fee to practice pharmacy in this state. A certificate and renewal expires at the time prescribed by department rule. A defaulter in a renewal fee may be reinstated within 1 year of the default without examination on payment of the arrears and compliance with other requirements prescribed by law.

History: En. Sec. 647, Pol. C. 1895; re-en. Sec. 1629, Rev. C. 1907; re-en. Sec. 8, Ch. 134, L. 1915; re-en. Sec. 3177, R.C.M. 1921; re-en. Sec. 3177, R.C.M. 1935; amd. Sec. 7, Ch. 175, L. 1939; amd. Sec. 1, Ch. 70, L. 1957; amd. Sec. 5, Ch. 241, L. 1971; amd. Sec. 153, Ch. 350, L. 1974; amd. Sec. 2, Ch. 439, L. 1977; R.C.M. 1947, 66-1507(part); amd. Sec. 16, Ch. 345, L. 1981; amd. Sec. 7, Ch. 379, L. 1981; amd. Sec. 38, Ch. 429, L. 1995; amd. Sec. 10, Ch. 492, L. 1997.

37-7-304. Repealed. Sec. 128, Ch. 429, L. 1995.

History: En. 66-1507.1 by Sec. 3, Ch. 439, L. 1977; R.C.M. 1947, 66-1507.1.

37-7-305. Repealed. Sec. 128, Ch. 429, L. 1995.

History: En. 66-1507.2 by Sec. 4, Ch. 439, L. 1977; R.C.M. 1947, 66-1507.2.

37-7-306 reserved.

37-7-307. Utilization plan — contents — responsibility of pharmacist. (1) A utilization plan must set forth:

(a) the name and qualifications of the supervising pharmacist or pharmacists;

(b) the nature and location of the supervising pharmacist's pharmacy practice;

(c) a summary of the tasks delegated by the pharmacist and the methods by which a supervising pharmacist may verify and document the tasks. "Verify" means the personal confirmation by a supervising pharmacist of the correctness of the tasks undertaken by the pharmacy technician.

(d) any other information the board considers relevant.

(2) The board shall approve a utilization plan if it determines that the duties to be delegated are:

(a) assigned, verified, and documented by the supervising pharmacist; and

(b) within the scope of the training and competence of the person to whom the authority is delegated.

(3) A supervising pharmacist is responsible for the actions of a pharmacy technician or auxiliary who performs services for the pharmacist under the terms of a utilization plan.

History: En. Sec. 3, Ch. 219, L. 1991.

37-7-308. Preparation and approval of utilization plan — revocation of or refusal to renew plan — contested case hearing. (1) A supervising pharmacist shall:

(a) prepare the utilization plan and submit a summary of the plan to the board for approval;

(b) keep on file in the pharmacy a copy of the utilization plan for inspection by the board; and

(c) annually review the utilization plan and provide documentation to the board that the plan accurately reflects the current use of the services of a pharmacy technician or auxiliary.

(2) The board shall refuse to approve or shall revoke or fail to renew approval of a utilization plan if it does not conform to the provisions of 37-7-307 through 37-7-309 and rules adopted under those sections.

(3) One year after the board revokes approval of a utilization plan, the supervising pharmacist may reapply for approval by complying with the requirements of 37-7-307 through 37-7-309 and with rules adopted under those sections.

(4) Before refusing to approve or before revoking or failing to renew approval of a utilization plan, the board shall provide the supervising pharmacist a reasonable time in which to supply additional information demonstrating compliance with the requirements of 37-7-307 through 37-7-309 and with rules adopted under those sections and the opportunity to request a hearing.

(5) If a supervising pharmacist requests a hearing, the board shall conduct the hearing in accordance with the contested case procedures in Title 2, chapter 4, part 6.

History: En. Sec. 4, Ch. 219, L. 1991.

37-7-309. Utilization plan approval fee — renewal of approval — renewal fee. (1) A pharmacy in which a pharmacist uses the services of a pharmacy technician or auxiliary under an approved utilization plan shall pay to the board a utilization plan approval fee in an amount set by the board as provided in 37-1-134. Payment must be made when the utilization plan is submitted and is not refundable.

(2) Approval of a utilization plan expires 1 year from the date of approval. The board shall grant renewal of approval upon payment of a renewal fee in an amount set by the board and documentation as required by 37-7-308(1)(c).

(3) The board may adopt fees, as provided in 37-1-134, for other costs associated with implementation of 37-7-307 through 37-7-309, including the costs of onsite inspection of the utilization plan at the participating pharmacy.

(4) The board shall deposit fees received in the state special revenue fund for use by the board in administration of 37-7-307 through 37-7-309, subject to 37-1-101(6).

History: En. Sec. 5, Ch. 219, L. 1991.

37-7-310 reserved.

37-7-311. Repealed. Sec. 128, Ch. 429, L. 1995.

History: En. Sec. 644, Pol. C. 1895; re-en. Sec. 1626, Rev. C. 1907; re-en. Sec. 5, Ch. 134, L. 1915; re-en. Sec. 3174, R.C.M. 1921; re-en. Sec. 3174, R.C.M. 1935; amd. Sec. 4, Ch. 175, L. 1939; amd. Sec. 25, Ch. 93, L. 1969; amd. Sec. 3, Ch. 241, L. 1971; amd. Sec. 150, Ch. 350, L. 1974; R.C.M. 1947, 66-1504(2)(g); amd. Sec. 10, Ch. 22, L. 1979; amd. Sec. 4, Ch. 362, L. 1981; amd. Sec. 8, Ch. 379, L. 1981; amd. Sec. 4, Ch. 247, L. 1983.

37-7-312 through 37-7-320 reserved.

37-7-321. Certified pharmacy license. (1) The board shall provide for the original certification and renewal by the department of every pharmacy doing business in this state. On presentation of evidence satisfactory to the board and on application on a form prescribed by the board and on the payment of an original certification fee prescribed by the board, the department shall issue a license to a pharmacy as a certified pharmacy. However, the license may be granted only to pharmacies operated by registered pharmacists qualified under this chapter. The renewal fee for a pharmacy must be set by the board. Any default in the payment of the renewal fee after the date the fee is due increases the renewal fee as prescribed by the board. The license must be displayed in a conspicuous place in the pharmacy for which it is issued and expires on the date set by department rule. It is unlawful for a person to conduct a pharmacy, use the word "pharmacy" to identify the business, or use the word "pharmacy" in advertising unless a license has been issued and is in effect.

(2) The board may impose discipline or deny or refuse to renew a pharmacy license for reasons specified in and subject to conditions specified in Title 37, chapter 1.

History: En. Sec. 8, Ch. 175, L. 1939; amd. Sec. 1, Ch. 76, L. 1959; amd. Sec. 1, Ch. 9, L. 1967; amd. Sec. 1, Ch. 80, L. 1969; amd. Sec. 6, Ch. 241, L. 1971; amd. Sec. 1, Ch. 308, L. 1974; amd. Sec. 154, Ch. 350, L. 1974; amd. Sec. 8, Ch. 533, L. 1977; R.C.M. 1947, 66-1508; amd. Sec. 17, Ch. 345, L. 1981; amd. Sec. 5, Ch. 362, L. 1981; amd. Sec. 9, Ch. 379, L. 1981;

amd. Sec. 5, Ch. 247, L. 1983; amd. Sec. 39, Ch. 429, L. 1995; amd. Sec. 11, Ch. 492, L. 1997.

37-7-322. Use of words pharmacy, apothecary, or chemist shop for advertising. It is unlawful for a person to carry on, conduct, or transact a retail business under a name which contains as a part thereof the words "pharmacy", "apothecary", or "chemist shop" or any abbreviation, translation, extension, or variation thereof or in any manner by advertisement circular or poster, sign, or otherwise to describe or refer to the place of business conducted by that person by such term, abbreviation, translation, extension, or variation unless the place so conducted is a pharmacy within the meaning of this chapter and duly licensed as such and in the charge of a registered pharmacist.

History: En. Sec. 11, Ch. 175, L. 1939; amd. Sec. 9, Ch. 101, L. 1977; R.C.M. 1947, 66-1522.

Cross-References

Assumed business names, Title 30, ch. 13, part 2.

37-7-323. Penalty — enforcement. (1) A person, firm, partnership, or corporation violating any of the provisions of parts 1 through 3 of this chapter is guilty of a misdemeanor and upon conviction for each violation shall be punished accordingly and shall automatically lose any license issued by the board.

(2) In addition to the penalty provided in subsection (1), the board may withdraw its approval of a utilization plan previously approved for a supervising pharmacist who:

(a) violates any provision of 37-7-307 through 37-7-309 or rules adopted under those sections;

(b) obtained the approval of the utilization plan through fraud; or

(c) acts in a manner contrary to the terms of the utilization plan.

(3) The board may seek an injunction to enforce the provisions of subsection (2).

History: En. Sec. 5, Ch. 104, L. 1931; re-en. Sec. 3202.11, R.C.M. 1935; amd. Sec. 15, Ch. 175, L. 1939; R.C.M. 1947, 66-1526; amd. Sec. 6, Ch. 219, L. 1991.

Cross-References

Disciplinary authority of boards — injunctions, 37-1-136.

Criminal responsibility and accountability of corporations, 45-2-311, 45-2-312.

Misdemeanor penalty when none specified, 46-18-212.

Fines in felony and misdemeanor cases, 46-18-231.

37-7-324. Deposit of fees and fines. Fines paid under this chapter, except those paid to a justice's court, and fees collected by the department for registration and licenses issued under this chapter shall be deposited in the state special revenue fund for the use of the board, subject to 37-1-101(6).

History: En. Sec. 6, Ch. 104, L. 1931; re-en. Sec. 3202.12, R.C.M. 1935; amd. Sec. 16, Ch. 175, L. 1939; amd. Sec. 134, Ch. 147, L. 1963; amd. Sec. 159, Ch. 350, L. 1974; R.C.M. 1947, 66-1527; amd. Sec. 1, Ch. 277, L. 1983; amd. Sec. 23, Ch. 557, L. 1987.

Cross-References

Collection and disposition of fines, penalties, forfeitures, and fees, 3-10-601.

Part 4
Prescriptions Regulated — Review — Counseling

Part Cross-References

Dispensing of drugs, Title 37, ch. 2, part 1.

Dangerous drugs, Title 45, ch. 9.

Controlled substances, Title 50, ch. 32.

37-7-401. Restrictions upon sale or prescription of opiates — coding prohibited — refilling prescriptions. (1) It is unlawful for any physician, physician assistant-certified, or nurse specialist to sell or give to or prescribe for any person any opium, morphine, alkaloid-cocaine, or alpha or beta eucaine or codeine or heroin or any derivative, mixture, or preparation of any of them, except to a patient believed in good faith to require the same for medical use and in quantities proportioned to the needs of the patient.

(2) A prescription must be written so that it can be compounded by any registered pharmacist. The coding of any prescription is a violation of this section.

(3) A prescription marked "non repetatur", "non rep", or "N.R." cannot be refilled. A prescription marked to be refilled by a specified amount may be filled by any registered pharmacist the number of times marked on the prescription. A prescription not bearing any refill instructions may not be refilled without first obtaining permission from the prescriber. A prescription may not be refilled for more than 3 years from the date it was originally filled. A narcotic prescription may not be refilled.

History: En. Sec. 2, Ch. 11, L. 1911; re-en. Sec. 3187, R.C.M. 1921; re-en. Sec. 3187, R.C.M. 1935; amd. Sec. 2, Ch. 33, L. 1951; R.C.M. 1947, 66-1514; amd. Sec. 10, Ch. 379, L. 1981; amd. Sec. 17, Ch. 97, L. 1989; amd. Sec. 2, Ch. 444, L. 1989.

37-7-402. Penalty for violation of provisions on sale or prescription of opiates, coding, refilling. Any person found guilty of the violation of 37-7-401 shall be punished for each separate offense (and each and every individual case shall constitute a separate offense) by a fine of not less than $50 or more than $500 or by imprisonment in the county jail for a period of not less than 60 days or more than 100 days or by both such fine and imprisonment.

History: En. Sec. 3, Ch. 11, L. 1911; re-en. Sec. 3188, R.C.M. 1921; re-en. Sec. 3188, R.C.M. 1935; R.C.M. 1947, 66-1515.

Cross-References

Criminal responsibility and accountability of corporations, 45-2-311, 45-2-312.

Fines in felony and misdemeanor cases, 46-18-231.

37-7-403. Repealed. Sec. 8, Ch. 247, L. 1983.

History: En. Sec. 1, Ch. 11, L. 1935; re-en. Sec. 3185.1, R.C.M. 1935; amd. Sec. 155, Ch. 350, L. 1974; R.C.M. 1947, 66-1511.

37-7-404. Repealed. Sec. 8, Ch. 247, L. 1983.

History: En. Sec. 2, Ch. 11, L. 1935; re-en. Sec. 3185.2, R.C.M. 1935; amd. Sec. 156, Ch. 350, L. 1974; R.C.M. 1947, 66-1512.

37-7-405. Repealed. Sec. 8, Ch. 247, L. 1983.

History: En. Sec. 3, Ch. 11, L. 1935; re-en. Sec. 3185.3. R.C.M. 1935; R.C.M. 1947, 66-1513.

37-7-406. Standards for prospective drug utilization review and patient counseling. (1) The board may by rule set standards for the provision of prospective drug utilization review information from a pharmacist to a patient before a prescription is dispensed to the patient or his representative. The review may include, when applicable, an appropriate level of screening for potential drug therapy problems due to therapeutic duplication, drug disease contraindications, drug interactions, incorrect drug dosage or duration of drug treatment, drug-allergy interactions, and clinical abuse or misuse. The sources for the standards must be nationally recognized compendia as the board may designate.

(2) Under the standards provided for in this section, the pharmacist should offer to discuss those matters that, in his professional judgment, he considers significant to the patient's safe and proper use of the prescribed drug. The counseling should encompass the topics set forth in 42 U.S.C. 1396r-8 of the Social Security Act.

(3) Communications between a pharmacist and a patient pursuant to the standards provided for in this section constitute health care information for the purposes of Title 50, chapter 16, part 5.

(4) Standards established by the board under this section apply to all patients seen by a pharmacist or to categories of patients as the board may designate. However, standards provided for in this section may not apply to inpatients of a health care facility in which a nurse or other licensed health care professional is authorized to administer the prescribed drug.

History: En. Sec. 1, Ch. 664, L. 1991.

37-7-407. Penalty. In addition to all other penalties provided by law, a person violating 37-7-406 shall be fined not more than $250 for each violation.

History: En. Sec. 8, Ch. 664, L. 1991.

Part 5

Drug Product Selection

37-7-501. Short title. This part may be cited as the "Montana Drug Product Selection Act".

History: En. 66-1528 by Sec. 1, Ch. 403, L. 1977; R.C.M. 1947, 66-1528.

37-7-502. Definitions. As used in this part, the following definitions apply:

(1) "Bioavailability" means the extent and rate of absorption from a dosage form as reflected by the time-concentration curve of the administered drug in the systemic circulation.

(2) "Bioequivalent" means a chemical equivalent which, when administered to the same individual in the same dosage regimen, will result in comparable bioavailability.

(3) "Brand name" means the proprietary or the registered trademark name given to a drug product by its manufacturer, labeler, or distributor and placed upon the drug, its container, label, or wrapping at the time of packaging.

(4) "Chemical equivalent" means drug products that contain the same amounts of the same therapeutically active ingredients in the same dosage forms and that meet present compendium standards.

(5) "Drug product" means a dosage form containing one or more active therapeutic ingredients along with other substances included during the manufacturing process.

(6) "Generic name" means the chemical or established name of a drug product or drug ingredient published in the latest edition of the official United States Pharmacopoeia/National Formulary.

(7) "Person" means an individual, firm, partnership, association, corporation, or any other entity, whether organized for profit or not.

(8) "Prescriber" means a practitioner licensed under the professional laws of the state to administer medicine and drugs.

(9) "Present compendium standard" means the official standard for drug excipients and drug products listed in the latest revision of the United States Pharmacopoeia/National Formulary.

(10) "Product selection" means to dispense without the prescriber's express authorization a different drug product in place of the drug product prescribed.

(11) "Therapeutically equivalent" means those chemical equivalents which, when administered in the same dosage regimen, will provide essentially the same therapeutic effect as measured by the control of a symptom or a disease and/or toxicity.

History: En. 66-1529 by Sec. 2, Ch. 403, L. 1977; R.C.M. 1947, 66-1529; amd. Sec. 11, Ch. 379, L. 1981.

37-7-503. Rulemaking. The board of pharmacy may adopt, amend, or repeal rules necessary for the implementation, continuation, and enforcement of this part in accordance with the Montana Administrative Procedure Act.

History: En. 66-1535 by Sec. 8, Ch. 403, L. 1977; R.C.M. 1947, 66-1535; amd. Sec. 1, Ch. 247, L. 1983.

Cross-References

Montana Administrative Procedure Act, Title 2, ch. 4.

37-7-504. General prohibition of drug substitution. No person may substitute a drug different from the one ordered or deviate in any manner from the requirements of an order or prescription, except as provided in this part.

History: En. 66-1523(2) by Sec. 10, Ch. 403, L. 1977; R.C.M. 1947, 66-1523.

Cross-References

Unfair trade practices and consumer protection, Title 30, ch. 14.

37-7-505. Product selection permitted — limitation. (1) Except as limited by subsection (2) of this section and unless instructed otherwise by the purchaser, the pharmacist who receives a written or oral prescription for a specific drug product by brand or proprietary name may select a less expensive drug product with the same generic name, the same strength, quantity, dose, and dosage form as the prescribed drug which is, in the pharmacist's professional opinion, therapeutically equivalent, bioequivalent, and bioavailable.

(2) If, in the professional opinion of the prescriber, it is medically necessary for his patient that an equivalent drug product not be selected, the prescriber may so indicate by certifying that in his professional judgment the specific brand-name drug product is medically necessary for that particular patient. In

the case of a prescription transmitted orally, the prescriber must expressly indicate to the pharmacist that the brand-name drug product prescribed is medically necessary.

History: **En. 66-1530 by Sec. 3, Ch. 403, L. 1977; R.C.M. 1947, 66-1530.**

37-7-506. Notice to purchaser. (1) A pharmacist who selects a drug product as provided in 37-7-505 shall notify the person presenting the prescription that he may refuse the product selection as provided in 37-7-505.

(2) Each pharmacy shall display in a prominent place that is in clear and unobstructed public view, at or near the place where prescriptions are dispensed, a sign stating: "This pharmacy may be able to select a less expensive drug product which is equivalent to the one prescribed by your physician unless you or your physician request otherwise." The printing on the sign shall be in block letters not less than 1 inch in height.

History: **En. 66-1531 by Sec. 4, Ch. 403, L. 1977; R.C.M. 1947, 66-1531.**

37-7-507. Savings passed on. (1) A pharmacist selecting a less expensive drug product must pass on to the purchaser the full amount of the savings realized by the product selection. In no event may the pharmacist charge a different professional fee for dispensing a different drug product than the drug product originally prescribed.

(2) If the prescriber prescribes a drug product by its generic name, the pharmacist must, consistent with reasonable judgment, dispense the lowest retail priced, therapeutically equivalent brand which is in stock.

History: **En. 66-1532 by Sec. 5, Ch. 403, L. 1977; R.C.M. 1947, 66-1532.**

37-7-508. Product selection not practice of medicine. The selection of a drug product by a registered pharmacist under the provisions of this part does not constitute the practice of medicine.

History: **En. 66-1533 by Sec. 6, Ch. 403, L. 1977; R.C.M. 1947, 66-1533.**

Cross-References

Exemptions from physician's licensing requirements, 37-3-103.

37-7-509. Limitations on liability. (1) A pharmacist making a product selection under the provisions of this part assumes no greater responsibility for selecting the dispensed drug product than he would incur in filling a prescription for a drug product prescribed by a generic name.

(2) When a pharmacist selects a drug product, the prescriber may not be held liable in an action for loss, damage, injury, or death to a person caused by the use of the selected drug product, except that if the original drug product was incorrectly prescribed, the prescriber is not relieved of liability.

History: **En. 66-1534 by Sec. 7, Ch. 403, L. 1977; R.C.M. 1947, 66-1534.**

Cross-References

Availability of remedies — liability, Title 27, ch. 1.

Montana Medical Legal Panel Act, Title 27, ch. 6.

37-7-510. Penalty. (1) In addition to all other penalties provided by law, a person who violates the provisions of 37-7-505, 37-7-506, or 37-7-507 or any rule promulgated as provided in 37-7-503 shall be fined no more than $250 for each violation.

(2) The penalty imposed under this part may be remitted or mitigated upon such terms and conditions as the board of pharmacy considers proper and consistent with the public health and safety.

(3) A civil penalty imposed under this part becomes due and payable when the person incurring the penalty receives a notice in writing from the board of pharmacy. The notice shall be sent by registered or certified mail and must include:

(a) reference to the particular sections of the statute or rule;
(b) a short and plain statement of the matters asserted as charged;
(c) a statement of the amount of the penalty or penalties imposed; and
(d) a statement of the person's right to request a hearing.

(4) The person to whom the notice is addressed has 20 days from the date of the notice in which to make written application for a hearing before the board of pharmacy.

History: En. 66-1536 by Sec. 11, Ch. 403, L. 1977; R.C.M. 1947, 66-1536; amd. Sec. 1, Ch. 247, L. 1983.

Cross-References

Contested case as including licensing, 2-4-102, 2-4-631.

Contested case procedure, Title 2, ch. 4, part 6.

Criminal responsibility and accountability of corporations, 45-2-311, 45-2-312.

Part 6

Wholesale Drug Distributors — Licensing

Part Compiler's Comments

Histories of Repealed Sections:

39-7-601. En. Sec. 1, Ch. 579, L. 1987.

39-7-602. En. Sec. 3, Ch. 579, L. 1987.

39-7-603. En. Sec. 7, Ch. 579, L. 1987; amd. Sec. 1, Ch. 251, L. 1989.

39-7-604. En. Sec. 4, Ch. 579, L. 1987; amd. Sec. 2, Ch. 251, L. 1989.

39-7-605. En. Sec. 5, Ch. 579, L. 1987; amd. Sec. 3, Ch. 251, L. 1989.

39-7-606. En. Sec. 6, Ch. 579, L. 1987; amd. Sec. 4, Ch. 251, L. 1989.

37-7-601. Scope and purpose. This part applies to a person or entity engaged in the wholesale distribution of prescription drugs in this state. The purpose of this part is to implement the federal Prescription Drug Marketing Act of 1987 by providing minimum standards, terms, and conditions for licensing by the department of persons or entities engaged in wholesale distributions of prescription drugs.

History: En. Sec. 2, Ch. 134, L. 1991.

37-7-602. Definitions. As used in this part, the following definitions apply:

(1) "Blood" means whole blood collected from a single donor and processed either for transfusion or for further manufacturing.

(2) "Blood component" means that part of blood separated by physical or mechanical means.

(3) "Drug sample" means a unit of a prescription drug that is not intended to be sold and is intended to promote the sale of the drug.

(4) "Manufacturer" means a person or entity engaged in the manufacturing, preparing, propagating, compounding, processing, packaging, repackaging, or labeling of a prescription drug.

(5) "Prescription drug" means any drug for humans that is required by federal law or regulation to be dispensed only by a prescription, including finished dosage forms and active ingredients subject to section 503(b) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C.S. 353).

(6) "Wholesale drug distribution" means distribution of prescription drugs to persons other than a consumer or patient. The term does not include:

(a) intracompany sales;

(b) the purchase or other acquisition, by a hospital or other health care entity that is a member of a group purchasing organization, of a drug for its own use from the group purchasing organization or from other hospitals or health care entities that are members of group purchasing organizations;

(c) the sale, purchase, or trade of a drug or an offer to sell, purchase, or trade a drug by a charitable organization described in section 501(c)(3) of the Internal Revenue Code of 1954 to a nonprofit affiliate of the organization to the extent otherwise permitted by law;

(d) the sale, purchase, or trade of a drug or an offer to sell, purchase, or trade a drug among hospitals or other health care entities that are under common control. For purposes of this subsection (d), "common control" means the power to direct or cause the direction of the management and policies of a person or an organization, whether by ownership of stock, voting rights, contract, or otherwise.

(e) the sale, purchase, or trade of a drug or an offer to sell, purchase, or trade a drug for emergency medical reasons. For the purposes of this subsection (e), "emergency medical reasons" includes transfers of prescription drugs by a retail pharmacy to another retail pharmacy to alleviate a temporary shortage.

(f) the sale, purchase, or trade of a drug or an offer to sell, purchase, or trade a drug, or the dispensing of a drug pursuant to a prescription;

(g) the distribution of drug samples by manufacturers' representatives or distributors' representatives; or

(h) the sale, purchase, or trade of blood and blood components intended for transfusion.

(7) "Wholesale drug distributor" means a person or entity engaged in wholesale distribution of prescription drugs, including but not limited to manufacturers, repackers, own-label distributors, private-label distributors, jobbers, brokers, warehouses (including manufacturers' and distributors' warehouses, chain drug warehouses, and wholesale drug warehouses), independent wholesale drug traders, and retail pharmacies that conduct wholesale distributions.

History: En. Sec. 3, Ch. 134, L. 1991.

37-7-603. Prohibited purchase or receipt of drugs — restrictions on wholesale drug distributors — penalty. (1) Except as otherwise provided, it is unlawful for a person to knowingly purchase or receive a prescription drug from a source other than a person or entity licensed under this part.

(2) Licensed wholesale drug distributors other than pharmacies may not dispense or distribute prescription drugs directly to patients.

(3) A person who violates the provisions of this section is guilty of a misdemeanor.

History: En. Sec. 4, Ch. 134, L. 1991.

37-7-604. Wholesale drug distributor licensing requirements — fee — federal compliance. (1) A person or distribution outlet may not act as a wholesale drug distributor without first obtaining a license from the board and paying the license fee.

(2) A license may not be issued or renewed for a wholesale drug distributor to operate in this state unless the applicant:

(a) agrees to abide by federal and state law and to comply with the rules adopted by the board; and

(b) pays the license fee set by the board.

(3) The board in its discretion may require that a separate license be obtained for:

(a) each facility directly or indirectly owned or operated by the same business entity within the state; or

(b) a parent entity with divisions, subsidiaries, or affiliates within the state if operations are conducted at more than one location and joint ownership and control exists among all entities.

(4) In order to obtain and maintain a wholesale drug distributorship in this state, an applicant shall provide written documentation to the board attesting that the applicant has maintained and will continue to maintain:

(a) adequate storage conditions and facilities;

(b) minimum liability and other insurance that may be required by applicable federal or state law;

(c) a functioning security system that includes:

(i) an after hours central alarm or comparable entry detection system;

(ii) restricted access to the premises;

(iii) comprehensive employee applicant screening; and

(iv) safeguards against employee theft;

(d) a system of records setting forth all activities of wholesale drug distribution as defined in 37-7-602 for at least a period of the 2 previous years. The system of records must be accessible, as defined by board regulations, for inspections authorized by the board.

(e) principals, including officers, directors, primary shareholders, and management executives, who shall at all times demonstrate and maintain their responsibility for conducting the business in conformity with sound financial practices as well as state and federal law;

(f) complete, updated information, to be provided to the board as a condition for obtaining and retaining a license, pertaining to each wholesale drug distributor to be licensed, including but not limited to:

(i) all pertinent corporate license information, if applicable; and

(ii) other information regarding ownership, principals, key personnel, and facilities;

(g) a written protocol of procedures and policies that assures preparation by the wholesale drug distributor for the handling of security or operational problems, including but not limited to those caused by:

(i) natural disaster or government emergency;

(ii) inventory inaccuracies or product shipping and receiving;

(iii) insufficient inspections for all incoming and outgoing product shipments;

(iv) lack of control of outdated or other unauthorized products;

(v) inappropriate disposition of returned goods; and

(vi) failure to promptly comply with product recalls; and

(h) operations in compliance with all federal requirements applicable to wholesale drug distribution.

(5) An agent or employee of a licensed wholesale drug distributor need not be licensed as a wholesale drug distributor.

(6) For purposes of this section, all rules and regulations promulgated by the board must conform to the wholesale drug distributor licensing guidelines formally adopted by the United States food and drug administration. If a conflict arises between a food and drug administration guideline and a rule or regulation of the board, the former controls.

History: En. Sec. 5, Ch. 134, L. 1991.

37-7-605. Out-of-state wholesale drug distributor licensing requirements. (1) It is unlawful for an out-of-state wholesale drug distributor to conduct business in this state without first obtaining a license from the board and paying the license fee established by the board.

(2) Application for a license under this section must be made on a form furnished by the board.

(3) The issuance of a license may not affect tax liability imposed by the department of revenue on any out-of-state wholesale drug distributor.

(4) A person acting as principal or agent for an out-of-state wholesale drug distributor may not sell or distribute drugs in this state unless the distributor has obtained a license.

History: En. Sec. 6, Ch. 134, L. 1991.

37-7-606. Issuance of licenses. The license for wholesale drug distributors is effective during the period specified by department rule. An application for renewal of a license must be mailed to each licensee at least 30 days prior to the renewal date, and if the renewal application and the fee are not mailed by the renewal date, the license is void upon its expiration date.

History: En. Sec. 7, Ch. 134, L. 1991; amd. Sec. 40, Ch. 429, L. 1995; amd. Sec. 12, Ch. 492, L. 1997.

37-7-607. Repealed. Sec. 128, Ch. 429, L. 1995.

History: En. Sec. 8, Ch. 134, L. 1991.

37-7-608. Repealed. Sec. 128, Ch. 429, L. 1995.

History: En. Sec. 9, Ch. 134, L. 1991.

37-7-609. Board access to wholesale drug records. Wholesale drug distributors may keep records at a central location apart from the principal office of the wholesale drug distributor or the location where the drugs are stored and from where they are shipped, provided that the records must be available for inspection within 2 working days of a request by the board. The records may be kept in any form permissible under federal law applicable to prescription drug recordkeeping.

History: En. Sec. 10, Ch. 134, L. 1991.

37-7-610. Rulemaking authority. The board shall adopt rules and regulations necessary to carry out the purpose and enforce the provisions of this part. If the rules and regulations conflict with the wholesale drug distribution guidelines promulgated by the United States food and drug administration, the latter control.

History: En. Sec. 11, Ch. 134, L. 1991.

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

Part 7
Out-of-State Mail Service Pharmacies

37-7-701. Legislative declaration. The legislature recognizes that with the proliferation of alternate methods of health care delivery, there has arisen among third-party payors and insurance companies the desire to control the cost and use of pharmacy services through a variety of mechanisms, including the use of mail service pharmacies located outside this state. As a result, the legislature finds and declares that to continue to protect the consumer-patients of this state, all out-of-state mail service pharmacies that provide services to this state's residents must be registered with the board, shall disclose specific information about their services, shall meet the same standards for utilization of technicians as an in-state pharmacy, and shall provide pharmacy services at a high level of competence.

History: En. Sec. 2, Ch. 664, L. 1991; amd. Sec. 2, Ch. 300, L. 1993; amd. Sec. 2, Ch. 274, L. 1995.

37-7-702. Out-of-state mail service pharmacy defined. "Out-of-state mail service pharmacy" means a pharmacy located outside this state that:

(1) ships, mails, or delivers by any lawful means a dispensed legend drug to a resident in this state pursuant to a legally issued prescription;

(2) provides to a resident of this state information on drugs or devices that may include but is not limited to advice relating to therapeutic values, potential hazards, and uses; or

(3) counsels pharmacy patients residing in this state concerning adverse and therapeutic effects of drugs.

History: En. Sec. 3, Ch. 664, L. 1991.

37-7-703. Registration requirements. Each out-of-state mail service pharmacy must be registered with the board of pharmacy. In order to be registered with the board to do business in this state and for the renewal of its registration, an out-of-state mail service pharmacy:

(1) (a) shall submit a certificate from the appropriate licensing authority with which it is currently licensed and in good standing in the state in which its dispensing facilities are located; and

(b) shall comply with all applicable laws, regulations, and standards of that state and the United States and, if requested by the board, provide evidence that it has complied;

(2) shall register with the board and provide information on ownership and location, including the names and titles of the corporate officers, of the out-of-state mail service pharmacy and the identity of a pharmacist licensed in the state in which the pharmacy is located who is in charge of dispensing prescriptions for shipment to Montana from the out-of-state mail service pharmacy;

(3) shall submit a utilization plan for the employment of pharmacy technicians if allowed by the state where the mail service pharmacy is located.

If the state in which the pharmacy is located does not establish a ratio of technicians to pharmacists for determining the number of pharmacy technicians or otherwise define the role of the pharmacist in compounding or dispensing drugs at the pharmacy, then the out-of-state mail service pharmacy may not allow a pharmacist to supervise more than one supportive person at any one time in the compounding or dispensing of prescription drugs, unless approved by the board as provided in 37-7-307 through 37-7-309.

(4) shall submit to the board proof of the pharmacist's good standing with the licensing authority in the state where the pharmacist is employed and the pharmacist's written commitment to comply with the utilization plan, if any, for each pharmacist identified under subsection (2) and shall provide to the board the same toll-free telephone service referenced in 37-7-706 in order to comply with all information requests by the board; and

(5) shall pay an initial registration fee and a periodic renewal fee in an amount to be determined by the board and at a time established by the department by rule.

History: En. Sec. 4, Ch. 664, L. 1991; amd. Sec. 3, Ch. 300, L. 1993; amd. Sec. 3, Ch. 274, L. 1995; amd. Sec. 13, Ch. 492, L. 1997.

37-7-704. Inspections. If the licensing or regulatory agency of the state in which an out-of-state mail service pharmacy is domiciled fails or refuses to inspect the out-of-state mail service pharmacy after receiving a request for an inspection from the board of this state, the board may cancel the out-of-state pharmacy's right to do business in this state unless the out-of-state pharmacy agrees to an onsite inspection by the board of this state.

History: En. Sec. 5, Ch. 664, L. 1991.

37-7-705. Product selection of prescribed drugs — notification. (1) An out-of-state mail service pharmacy may not substitute a prescription drug unless the substitution is made in compliance with the laws of this state and the rules and regulations of the board.

(2) An out-of-state mail service pharmacy may not dispense a substitute drug product to a resident of this state without notifying the patient of the substitution either by telephone or in writing.

History: En. Sec. 6, Ch. 664, L. 1991.

37-7-706. Patient communication — telephone service. Every out-of-state mail service pharmacy shall provide a toll-free telephone service, available at least 6 days a week and for 40 hours a week, to facilitate communication as may be required under this part, between patients in this state and a pharmacist who has access to the patients' records at the out-of-state mail service pharmacy. The toll-free telephone number must be affixed to all drug product containers dispensed to patients in this state.

History: En. Sec. 7, Ch. 664, L. 1991.

37-7-707 through 37-7-709 reserved.

37-7-710. Repealed. Sec. 128, Ch. 429, L. 1995.

History: En. Sec. 4, Ch. 300, L. 1993.

37-7-711. Penalty. In addition to all other penalties provided by law, a person violating 37-7-703 through 37-7-706 shall be fined not more than $250 for each violation.

History: En. Sec. 8, Ch. 664, L. 1991.

37-7-712. Rulemaking authority. The board of pharmacy may adopt rules to implement this part.

History: En. Sec. 4, Ch. 274, L. 1995.

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

Parts 8 through 10 reserved

Part 11
Peer Review

Part Cross-References

Licensing investigation and review — record access, 37-1-135.

Health care practitioners — nonliability for peer review, Title 37, ch. 2, part 2.

37-7-1101. Nonliability for peer review. No member, employee, or volunteer intervenor of the Montana pharmaceutical association in its peer review program is liable in damages to any person for any action taken or recommendation made within the scope of the program if the member, employee, or volunteer acts in good faith in accordance with the rules of the association.

History: En. Sec. 1, Ch. 235, L. 1987.

CHAPTER 8
NURSING

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Chapter Cross-References

Limits on liability for emergency care rendered at scene of accident or emergency, 27-1-714.

Limits on liability of health care provider in emergency situations, 27-1-734.

Professional service corporations, Title 35, ch. 4.

General provisions relating to health care practitioners, Title 37, ch. 2.

Limitations on dentistry and oral surgery practices involving general anesthesia, 37-4-511.

Collective bargaining for nurses, Title 39, ch. 32.

Nurses required to report child abuse, 41-3-201.

Report of fetal death that occurs outside licensed medical facility, 46-4-114.

Health care information, Title 50, ch. 16.

Duty of nurse to report violation of Montana Elder and Persons With Developmental Disabilities Abuse Prevention Act, 52-3-811.

Part 1
General

37-8-101. Purpose. (1) In order to safeguard life and health, any person practicing or offering to practice professional nursing in this state for compensation or personal gain shall be required to submit evidence that he or she is qualified to practice and shall be licensed as hereinafter provided.

(2) In order to safeguard life and health, any person practicing or offering to practice practical nursing in this state for compensation or personal gain shall be required to submit evidence that he or she is qualified to practice and shall be licensed as hereinafter provided.

History: En. Sec. 1, Ch. 243, L. 1953; amd. Sec. 1, Ch. 291, L. 1967; R.C.M. 1947, 66-1221(part).

37-8-102. Definitions. Unless the context requires otherwise, in this chapter, the following definitions apply:

(1) "Advanced practice registered nurse" means a registered professional nurse who has completed educational requirements related to the nurse's specific practice role, in addition to basic nursing education, as specified by the board pursuant to 37-8-202(5)(a).

(2) "Board" means the board of nursing provided for in 2-15-1844.

(3) "Department" means the department of commerce provided for in Title 2, chapter 15, part 18.

(4) "Nursing education program" means any board-approved school that prepares graduates for initial licensure under this chapter. Nursing education programs for:

(a) professional nursing may be a department, school, division, or other administrative unit in a senior or junior college or university;

(b) practical nursing may be a department, school, division, or other administrative unit in a vocational-technical institution or junior college.

(5) "Practice of nursing" embraces two classes of nursing service and activity, as follows:

(a) "Practice of practical nursing" means the performance for compensation of services requiring basic knowledge of the biological, physical, behavioral, psychological, and sociological sciences and of nursing procedures. Practical nursing practice uses standardized procedures in the observation and care of the ill, injured, and infirm; in the maintenance of health; in action to safeguard life and health; and in the administration of medications and treatments prescribed by a physician, advanced practice registered nurse, dentist, osteopath, or podiatrist authorized by state law to prescribe medications and treatments. These services are performed under the supervision of a registered nurse or a physician, dentist, osteopath, or podiatrist authorized by state law to prescribe medications and treatments. These services may include a charge-nurse capacity in a long-term care facility that provides skilled nursing care or intermediate nursing care, as defined in 50-5-101, under the general supervision of a registered nurse.

(b) "Practice of professional nursing" means the performance for compensation of services requiring substantial specialized knowledge of the biological, physical, behavioral, psychological, and sociological sciences and of nursing theory as a basis for the nursing process. The nursing process is the assessment, nursing analysis, planning, nursing intervention, and evaluation in the promotion and maintenance of health; the prevention, casefinding, and management of illness, injury, or infirmity; and the restoration of optimum function. The term also includes administration, teaching, counseling, supervision, delegation, and evaluation of nursing practice and the administration of medications and treatments prescribed by physicians, advanced practice registered nurses, dentists, osteopaths, or podiatrists authorized by state law to prescribe medications and treatments. Each registered nurse is directly accountable and responsible to the consumer for the quality of nursing care rendered. As used in this subsection (5)(b):

(i) "nursing analysis" is the identification of those client problems for which nursing care is indicated and may include referral to medical or community resources;

(ii) "nursing intervention" is the implementation of a plan of nursing care necessary to accomplish defined goals.

History: En. Sec. 2, Ch. 243, L. 1953; amd. Sec. 2, Ch. 291, L. 1967; amd. Sec. 114, Ch. 350, L. 1974; amd. Sec. 1, Ch. 180, L. 1975; R.C.M. 1947, 66-1222; amd. Sec. 4, Ch. 248, L. 1981; amd. Sec. 3, Ch. 274, L. 1981; amd. Sec. 1, Ch. 504, L. 1989; amd. Sec. 1, Ch. 584, L. 1993; amd. Sec. 25, Ch. 308, L. 1995; amd. Sec. 1, Ch. 136, L. 1997.

37-8-103. Exemptions — limitations on authority conferred. (1) This chapter may not be construed as prohibiting:

(a) gratuitous nursing by friends or members of the family;

(b) incidental care of the sick by domestic servants or persons primarily employed as housekeepers;

(c) nursing assistance in the case of an emergency;

(d) the practice of nursing by students enrolled in approved nursing education programs;

(e) the practice of nursing in this state by any legally qualified nurse of another state whose engagement requires the nurse to accompany and care for a patient temporarily residing in this state during the period of one engagement not to exceed 6 months in length, provided that person does not represent to the public that the person is a nurse licensed to practice in this state;

(f) the practice of any legally qualified nurse of another state who is employed by the United States government or any bureau, division, or agency of the United States while in the discharge of that nurse's official duties;

(g) nursing or care of the sick, with or without compensation, when done in connection with the practice of the religious tenets of any well-established religion or denomination by adherents of the religion or denomination;

(h) nursing or care of a minor who is in the care of a licensed foster parent, to the same extent that the care may be provided by a parent or guardian;

(i) the execution of a death sentence pursuant to 46-19-103; and

(j) nursing tasks delegated by licensed nurses to unlicensed persons according to rules adopted by the board.

(2) This chapter may not be construed:

(a) as conferring any authority to practice medicine, surgery, or any combination of medicine or surgery;

(b) to confer any authority to practice any of the healing arts prescribed by law to be practiced in the state of Montana; or

(c) to permit any person to undertake the treatment of disease by any of the methods employed in the healing arts unless the licensee has been qualified under the applicable law or laws licensing the practice of those professions or healing arts in the state of Montana.

(3) (a) This chapter may not be construed to apply to a personal assistant performing health maintenance activities and acting at the direction of a person with a disability.

(b) The following definitions apply to this subsection:

(i) "Health care professional" means an individual licensed pursuant to Title 37 as a physician assistant-certified, nurse practitioner, registered nurse, or occupational therapist or a medical social worker working as a member of a case management team for the purposes of the home- and community-based services program of the department of public health and human services.

(ii) "Health maintenance activities" includes urinary systems management, bowel treatments, administration of medications, and wound care if the activities in the opinion of the physician or other health care professional for the person with a disability could be performed by the person if the person were physically capable and if the procedure may be safely performed in the home.

(iii) "Physician" means an individual licensed pursuant to Title 37, chapter 3.

History: **En. Sec. 22, Ch. 243, L. 1953; amd. Sec. 7, Ch. 291, L. 1967; amd. Sec. 4, Ch. 101, L. 1977; R.C.M. 1947, 66-1242; amd. Sec. 1, Ch. 148, L. 1979; amd. Sec. 5, Ch. 248, L. 1981; amd. Sec. 2, Ch. 411, L. 1983; amd. Sec. 2, Ch. 584, L. 1993; amd. Sec. 2, Ch. 525, L. 1995.**

Cross-References

Exemptions from physician's licensing requirements, 37-3-103.

Part 2
Board of Nursing

Part Cross-References

Right to know, Art. II, sec. 9, Mont. Const.

Seal defined, 1-4-201.

Manner of making seal, 1-4-202.

Meeting defined, 2-3-202.

Adoption and publication of rules, Title 2, ch. 4, part 3.

Contested case procedure, Title 2, ch. 4, part 6.

Public records, Title 2, ch. 6.

Allocation of boards for administrative purposes, 2-15-121.

Quasi-judicial boards, 2-15-124.

Duties of Attorney General, 2-15-501.

Board established, 2-15-1844.

Open meetings, Title 3, ch. 3, part 2.

Preservation of records, Title 22, ch. 3, part 2.

Duties of Department, Director, and boards, Title 37, ch. 1, part 1.

Duty of Department to keep records, 37-1-101.

Disrupting meeting as disorderly conduct, 45-8-101.

37-8-201. Seal — board records public — legal counsel. (1) The board shall have a seal which shall be used to authenticate its acts. The seal shall have inscribed the words "Board of Nursing—Official Seal" and a device or legend designated by the board.

(2) The records and files of the board kept by the department are at all times open to public inspection.

(3) The attorney general is the attorney and legal counsel for the board, but the department may, with the approval of the attorney general, appoint additional legal counsel to assist the board and department in the administration and enforcement of this chapter.

History: En. Sec. 3, Ch. 243, L. 1953; amd. Sec. 115, Ch. 350, L. 1974; R.C.M. 1947, 66-1223; amd. Sec. 6, Ch. 248, L. 1981.

37-8-202. Organization — meetings — powers and duties. (1) The board shall meet annually and shall elect from among the nine members a president and a secretary. The board shall hold other meetings when necessary to transact its business. A majority of the board constitutes a quorum at any meeting. The department shall keep complete minutes and records of the meetings and rules and orders promulgated by the board.

(2) The board may make rules necessary to administer this chapter. The board shall prescribe standards for schools preparing persons for registration and licensure under this chapter. It shall provide for surveys of schools at times it considers necessary. It shall approve programs that meet the requirements of this chapter and of the board. The department shall, subject to 37-1-101, examine and issue to and renew licenses of qualified applicants. The board shall conduct hearings on charges that may call for discipline of a licensee, revocation of a license, or removal of schools of nursing from the approved list. It shall cause the prosecution of persons violating this chapter and may incur necessary expenses for prosecutions.

(3) The board may adopt and the department shall publish forms for use by applicants and others, including license, certificate, and identity forms and other appropriate forms and publications convenient for the proper

administration of this chapter. The board may fix reasonable fees for incidental services, within the subject matter delegated by this chapter.

(4) The board may participate in and pay fees to a national organization of state boards of nursing to ensure interstate endorsement of licenses.

(5) (a) The board may define the educational requirements and other qualifications applicable to recognition of advanced practice registered nurses. Advanced practice registered nurses are nurses who must have additional professional education beyond the basic nursing degree required of a registered nurse. Additional education must be obtained in courses offered in a university setting or its equivalent. The applicant must be certified or in the process of being certified by a certifying body for advanced practice registered nurses. Advanced practice registered nurses include nurse practitioners, nurse-midwives, nurse-anesthetists, and clinical nurse specialists.

(b) The board of nursing and the board of medical examiners, acting jointly, shall adopt rules regarding authorization for prescriptive authority of nurse specialists. If considered appropriate for a nurse specialist who applies to the board for authorization, prescriptive authority must be granted.

(6) The board shall establish a program to assist licensed nurses who are found to be physically or mentally impaired by habitual intemperance or the excessive use of narcotic drugs, alcohol, or any other drug or substance. The program must provide assistance to licensees in seeking treatment for substance abuse and monitor their efforts toward rehabilitation. For purposes of funding this program, the board shall adjust the license fee provided for in 37-8-431 commensurate with the cost of the program.

(7) The board may adopt rules for delegation of nursing tasks by licensed nurses to unlicensed persons.

(8) The board may fund additional staff, hired by the department, to administer the provisions of this chapter.

History: En. Sec. 5, Ch. 243, L. 1953; amd. Sec. 116, Ch. 350, L. 1974; amd. Sec. 2, Ch. 180, L. 1975; R.C.M. 1947, 66-1225; amd. Sec. 7, Ch. 248, L. 1981; amd. Sec. 2, Ch. 282, L. 1987; amd. Sec. 1, Ch. 430, L. 1989; amd. Sec. 3, Ch. 444, L. 1989; amd. Sec. 1, Ch. 290, L. 1991; amd. Sec. 3, Ch. 584, L. 1993; amd. Sec. 1, Ch. 422, L. 1995.

37-8-203. Compensation of members — expenses. Each member of the board shall receive compensation and travel expenses as provided in 37-1-133.

History: En. Sec. 6, Ch. 243, L. 1953; amd. Sec. 117, Ch. 350, L. 1974; amd. Sec. 3, Ch. 180, L. 1975; amd Sec. 31, Ch. 439, L. 1975; R.C.M. 1947, 66-1226; amd. Sec. 13, Ch. 474, L. 1981.

37-8-204. Executive director — qualifications. (1) The department shall hire an executive director to provide services to the board in connection with the board's duties of:

(a) prescribing curricula and standards for nursing schools and making surveys of and approving schools and courses;

(b) evaluating and approving courses for affiliation of student nurses; and

(c) reviewing qualifications of applicants for licensure.

(2) The executive director must be:

(a) a citizen of the United States;

(b) a graduate of an approved school of nursing;

(c) a holder of at least a master's degree with postgraduate courses in nursing;

(d) a registered professional nurse with at least 5 years' experience in teaching or administration in an approved school of nursing.

History: En. Sec. 19, Ch. 243, L. 1953; amd. Sec. 126, Ch. 350, L. 1974; amd. Sec. 6, Ch. 180, L. 1975; R.C.M. 1947, 66-1239(3); amd. Sec. 2, Ch. 83, L. 1981; amd. Sec. 4, Ch. 584, L. 1993.

Part 3

Schools of Nursing

37-8-301. Nursing education programs — application for approval. An institution desiring to conduct a nursing education program in the state shall apply to the department and submit evidence that it is prepared to carry out an educational program that complies with the provisions of this chapter and the rules adopted by the board pursuant to this section. The board shall adopt rules relating to the conduct of nursing education programs that are directed toward insuring qualifications to practice as a professional nurse or a practical nurse in those areas of service specified in 37-8-102.

History: En. Sec. 18, Ch. 243, L. 1953; amd. Sec. 125, Ch. 350, L. 1974; R.C.M. 1947, 66-1238; amd. Sec. 8, Ch. 248, L. 1981.

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

37-8-302. Nursing education programs — survey and approval. (1) It is the duty of the department through its authorized employees or representatives to periodically survey all nursing education programs. Written reports of such surveys shall be submitted to the board. If, in the opinion of the board, the requirements for an approved nursing education program are met, the program shall be granted initial or continuing approval.

(2) If the board determines that any approved nursing education program is not maintaining the standards required by law and the rules established by the board, notice shall be given to the nursing education program specifying the areas of noncompliance. A program that fails to correct these areas of noncompliance within the time designated by the board shall be removed from the list of approved nursing education programs.

History: En. Sec. 19, Ch. 243, L. 1953; amd. Sec. 126, Ch. 350, L. 1974; amd. Sec. 6, Ch. 180, L. 1975; R.C.M. 1947, 66-1239(1), (2); amd. Sec. 9, Ch. 248, L. 1981.

Part 4

Licensing

Part Cross-References

Proof of execution, Title 1, ch. 5, part 3.

Power of notary to take acknowledgments, 1-5-416.

Oaths, Title 1, ch. 6.

Adoption and publication of rules, Title 2, ch. 4, part 3.

Licensing to follow contested case procedure, 2-4-631.

Suspension of license fees for persons in military service, 10-1-605.

Affidavits, Title 26, ch. 1, part 10.

Duty of Department to administer and grade examinations, 37-1-101.

Duty of Board to adopt and enforce licensing and certification rules, 37-1-131.

Licensing boards to establish fees commensurate with costs, 37-1-134.

Licensing investigation and review — record access, 37-1-135.

Grounds for disciplinary action as grounds for license denial — conditions to new licenses, 37-1-137.

Licensure of criminal offenders, Title 37, ch. 1, part 2.

Perjury, 45-7-201.

False swearing, 45-7-202.

Report of fetal death that occurs outside licensed medical facility, 46-4-114.

37-8-401. Unlawful to indicate licensure without valid license. It shall be unlawful for any person to use any title, abbreviation, sign, card, or device to indicate that such person is a registered professional nurse or a licensed practical nurse unless such person has been duly licensed under the provisions of this chapter, and the license of such person shall be valid and in force in compliance with the provisions of this chapter.

History: En. Sec. 1, Ch. 243, L. 1953; amd. Sec. 1, Ch. 291, L. 1967; R.C.M. 1947, 66-1221(part).

37-8-402 through 37-8-404 reserved.

37-8-405. Professional nursing — qualifications of applicants for license. An applicant for a license to practice as a registered professional nurse shall submit to the department written evidence, verified by oath, that the applicant:

(1) has successfully completed at least an approved 4-year high school course of study or the equivalent as determined by the office of the superintendent of public instruction;

(2) has completed the basic professional curriculum in an approved school of nursing and holds a diploma therefrom; and

(3) meets other qualification requirements the board prescribes.

History: En. Sec. 7, Ch. 243, L. 1953; amd. Sec. 118, Ch. 350, L. 1974; R.C.M. 1947, 66-1227; amd. Sec. 3, Ch. 84, L. 1983.

37-8-406. License — professional nursing — examination. (1) An applicant for a license to practice as a registered professional nurse is required to pass a written examination in subjects the board determines necessary. A written examination may be supplemented by an oral or practical examination. The board may use any national standardized examination for professional nurse licensure identified in its rules. The passing score on such examination shall be established by the board in its rules. On successfully passing the examination, an applicant shall be issued a license to practice professional nursing.

(2) The board shall establish in its rules the requirements for rewriting the examination for those persons failing the examination on the first writing and subsequent writing.

History: En. Sec. 8, Ch. 243, L. 1953; amd. Sec. 1, Ch. 195, L. 1963; amd. Sec. 3, Ch. 291, L. 1967; amd. Sec. 119, Ch. 350, L. 1974; amd. Sec. 4, Ch. 180, L. 1975; amd. Sec. 1, Ch. 215, L. 1975; R.C.M. 1947, 66-1228(1); amd. Sec. 10, Ch. 248, L. 1981; amd. Sec. 18, Ch. 345, L. 1981.

37-8-407. Repealed. Sec. 128, Ch. 429, L. 1995.

History: En. Sec. 8, Ch. 243, L. 1953; amd. Sec. 1, Ch. 195, L. 1963; amd. Sec. 3, Ch. 291, L. 1967; amd. Sec. 119, Ch. 350, L. 1974; amd. Sec. 4, Ch. 180, L. 1975; amd. Sec. 1, Ch. 215, L. 1975; R.C.M. 1947, 66-1228(2), (3); amd. Sec. 11, Ch. 248, L. 1981; amd. Sec. 19, Ch. 345, L. 1981.

37-8-408. Title and abbreviation of registered nurse. Any person who holds a valid license to practice as a registered professional nurse in this state shall have the right to use the title "Registered Nurse" and the abbreviation "R.N.".

History: **En. Sec. 9, Ch. 243, L. 1953; R.C.M. 1947, 66-1229.**

37-8-409. Advanced practice registered nursing — when professional nurse may practice. (1) A person licensed under this chapter who holds a certificate in a field of advanced practice registered nursing may practice in the specified field of advanced practice registered nursing upon approval by the board of an amendment to the person's license granting a certificate in a field of advanced practice registered nursing. The board shall grant a certificate in a field of advanced practice registered nursing to a person who submits written verification of certification by a board-approved national certifying body appropriate to the specific field of advanced practice registered nursing and who meets any other qualification requirements that the board prescribes.

(2) The board may give temporary approval to practice in a specific field of advanced practice registered nursing to a person who:

(a) intends to apply for approval under subsection (1); and

(b) has completed the advanced practice registered nursing education required in order for the person to apply to take the first national certification examination available from a board-approved national certifying body appropriate to the specific field of advanced practice registered nursing.

(3) If the person fails to obtain certification upon the person's first examination, the temporary approval provided for in subsection (2) expires on receipt of the examination results. The temporary approval may not be extended.

(4) In order to protect the public, the board may, in consultation with persons in the specific field of advanced practice registered nursing, adopt specific rules for each field of advanced practice registered nursing for the granting of temporary approval to practice and for determining the supervision of the licensee with temporary approval.

History: **En. 66-1246 by Sec. 2, Ch. 97, L. 1974; R.C.M. 1947, 66-1246; amd. Sec. 12, Ch. 248, L. 1981; amd. Sec. 3, Ch. 422, L. 1995; amd. Sec. 41, Ch. 429, L. 1995.**

37-8-410 through 37-8-414 reserved.

37-8-415. Licensed practical nursing — qualifications of applicants. An applicant for a license to practice as a licensed practical nurse shall submit to the board written evidence, verified by oath, that the applicant:

(1) has successfully completed at least an approved 4-year high school course of study or the equivalent as determined by the office of the superintendent of public instruction;

(2) is a graduate of an approved practical nursing education program that is authorized to prepare persons for licensure as practical nurses; and

(3) meets other qualification requirements the board prescribes in its rules.

History: **En. Sec. 11, Ch. 243, L. 1953; amd. Sec. 4, Ch. 291, L. 1967; amd. Sec. 120, Ch. 350, L. 1974; R.C.M. 1947, 66-1231; amd. Sec. 13, Ch. 248, L. 1981.**

37-8-416. Licensed practical nursing — examination. An applicant for a license to practice as a practical nurse is required to pass a written examination in subjects as the board determines. A written examination may be supplemented by an oral or practical examination. The board may use any nationally standardized examination for practical nurse licensure identified by the board in its rules. The passing score shall be established by the board in its rules. On successfully passing the examination, the board shall issue to the applicant a license to practice as a licensed practical nurse.

History: **En. Sec. 12, Ch. 243, L. 1953; amd. Sec. 5, Ch. 291, L. 1967; amd. Sec. 121, Ch. 350, L. 1974; amd. Sec. 5, Ch. 180, L. 1975; R.C.M. 1947, 66-1232(1); amd. Sec. 14, Ch. 248, L. 1981.**

37-8-417. Repealed. Sec. 128, Ch. 429, L. 1995.

History: **En. Sec. 12, Ch. 243, L. 1953; amd. Sec. 5, Ch. 291, L. 1967; amd. Sec. 121, Ch. 350, L. 1974; amd. Sec. 5, Ch. 180, L. 1975; R.C.M. 1947, 66-1232(2), (3); amd. Sec. 15, Ch. 248, L. 1981.**

37-8-418. Licensed practical nursing — application fee. An applicant for a license to practice as a licensed practical nurse shall pay a fee prescribed by the board to the department at the time the application is submitted, which fee shall be returned to the applicant if the application is withdrawn not later than 5 days prior to the date of examination or the final submission to the board of application for endorsement without examination, subject to a deduction of an amount prescribed by the board to be retained by the department.

History: **En. Sec. 14, Ch. 243, L. 1953; amd. Sec. 2, Ch. 195, L. 1963; amd. Sec. 122, Ch. 350, L. 1974; amd. Sec. 2, Ch. 215, L. 1975; R.C.M. 1947, 66-1234; amd. Sec. 20, Ch. 345, L. 1981.**

37-8-419. Title and abbreviation of licensed practical nurse. Any person who holds a valid license to practice as a licensed practical nurse in this state shall have the right to use the title "Licensed Practical Nurse" and the abbreviation "L.P.N.".

History: **En. Sec. 15, Ch. 243, L. 1953; R.C.M. 1947, 66-1235.**

37-8-420 through 37-8-429 reserved.

37-8-430. Repealed. Sec. 128, Ch. 429, L. 1995.

History: **En. Sec. 19, Ch. 248, L. 1981.**

37-8-431. Renewal of license. (1) The license of a person licensed under this chapter must be renewed on the date set by department rule. At least 30 days prior to the renewal date, the department shall mail an application form for renewal of license to each person to whom a license was issued or renewed during the year. The applicant shall carefully complete and subscribe the application form and return it to the department with a renewal fee prescribed by the board on or before the renewal date.

(2) The board may increase or decrease the license fee so as to maintain in the state special revenue fund at all times an adequate amount to be used for the purpose of administering, policing, and enforcing the provisions of Title 37, chapter 1, and this chapter. On receipt of the application and fee, the department shall verify the accuracy of the application against its record and from other sources the board considers reliable and issue to the applicant a certificate of renewal. The certificate of renewal renders the holder a legal practitioner of nursing for the period stated in the certificate of renewal.

(3) A licensee who allows the license to lapse by failing to renew the license may be reinstated by the board on satisfactory explanation for the failure to

renew license and on payment of the current renewal fee prescribed by the board.

(4) A person practicing nursing during the time following the date the license has expired is an illegal practitioner and is subject to the penalties provided for violations of this chapter.

(5) The board may establish a reasonable late fee for licensees who fail to renew their license by the renewal date.

History: En. Sec. 16, Ch. 243, L. 1953; amd. Sec. 3, Ch. 195, L. 1963; amd. Sec. 123, Ch. 350, L. 1974; amd. Sec. 3, Ch. 215, L. 1975; R.C.M. 1947, 66-1236; amd. Sec. 16, Ch. 248, L. 1981; amd. Sec. 21, Ch. 345, L. 1981; amd. Sec. 1, Ch. 277, L. 1983; amd. Sec. 42, Ch. 429, L. 1995; amd. Sec. 14, Ch. 492, L. 1997.

37-8-432. Deposit of fees. Fees and fines collected by the department under this chapter, except those collected by a justice's court, shall be deposited in the state special revenue fund for the use of the board, subject to 37-1-101(6).

History: En. Sec. 17, Ch. 243, L. 1953; amd. Sec. 118, Ch. 147, L. 1963; amd. Sec. 124, Ch. 350, L. 1974; R.C.M. 1947, 66-1237; amd. Sec. 1, Ch. 277, L. 1983; amd. Sec. 24, Ch. 557, L. 1987.

Cross-References

Collection and disposition of fines, penalties, forfeitures, and fees, 3-10-601.

37-8-433. Repealed. Sec. 128, Ch. 429, L. 1995.

History: En. Sec. 5, Ch. 584, L. 1993.

37-8-434 through 37-8-440 reserved.

37-8-441. Repealed. Sec. 128, Ch. 429, L. 1995.

History: En. Sec. 20, Ch. 243, L. 1953; amd. Sec. 127, Ch. 350, L. 1974; R.C.M. 1947, 66-1240; amd. Sec. 17, Ch. 248, L. 1981; amd. Sec. 3, Ch. 282, L. 1987.

37-8-442. Repealed. Sec. 128, Ch. 429, L. 1995.

History: En. Sec. 21, Ch. 243, L. 1953; amd. Sec. 128, Ch. 350, L. 1974; R.C.M. 1947, 66-1241; amd. Sec. 18, Ch. 248, L. 1981; amd. Sec. 4, Ch. 282, L. 1987.

37-8-443. Violation of chapter — penalties. (1) It is a misdemeanor for a person (including a corporation, association, or individual) to:

(a) sell or fraudulently obtain or furnish any nursing diploma, license, or record or aid or abet therein;

(b) practice nursing as defined by this chapter under cover of any diploma, license, or record illegally or fraudulently obtained or signed or issued unlawfully or under fraudulent representation;

(c) practice professional nursing unless duly licensed to do so;

(d) practice practical nursing unless duly licensed to do so;

(e) use in connection with the person's name any designation tending to imply that the person is a registered professional nurse or a licensed practical nurse unless duly licensed to so practice;

(f) practice nursing during the time the person's license is suspended, revoked, or on inactive status;

(g) conduct a school of nursing or a course unless the school or course has been approved by the board;

(h) otherwise violate any provision of this chapter.

(2) Such misdemeanor is punishable by a fine of not less than $100 for the first offense. Each subsequent offense is punishable by a fine of $300, by

imprisonment of not more than 6 months in the county jail, or by both such fine and imprisonment.

(3) The several district courts within their respective county jurisdictions may hear, try, and determine such misdemeanor and impose in full the punishment and fines prescribed. It is necessary to prove, in any prosecution for misdemeanor under this section, only a single act prohibited by law or a single holding out or an attempt. It is not necessary to prove a general course of conduct in order to constitute a violation.

History: En. Sec. 23, Ch. 243, L. 1953; amd. Sec. 8, Ch. 291, L. 1967; amd. Sec. 5, Ch. 101, L. 1977; R.C.M. 1947, 66-1243.

Cross-References

Criminal responsibility and accountability of corporations, 45-2-311, 45-2-312.

37-8-444. Injunctions. When it appears to the board that any person is violating any of the provisions of this chapter, the board may in its own name bring an action in a court of competent jurisdiction for an injunction against such violation, and the proper courts of this state may enjoin any person, firm, or corporation from violation of this chapter without regard to whether proceedings have been or may be instituted before the board or whether criminal proceedings have been or may be instituted.

History: En. Sec. 24, Ch. 243, L. 1953; R.C.M. 1947, 66-1244.

Cross-References

Issuance of injunctions on nonjudicial days, 3-1-302, 3-5-302.

Contempts, Title 3, ch. 1, part 5.

Injunctions, Rule 65, M.R.Civ.P. (see Title 25, ch. 20); Title 27, ch. 19.

Affidavits, Title 26, ch. 1, part 10.

Disciplinary authority of boards — injunctions, 37-1-136.

CHAPTER 9

NURSING HOME ADMINISTRATORS

Part 1 — General

37-9-101. Definitions.

Part 2 — Board of Nursing Home Administrators

37-9-201. Organization and compensation of board.
37-9-202. Exclusive jurisdiction of board.
37-9-203. Duties of board.

Part 3 — Licensing

37-9-301. Qualifications for licensure — examination.
37-9-302. Department to license pursuant to board rules — nontransferability.
37-9-303. Repealed.
37-9-304. Fees.
37-9-305. Renewal of registration and license.
37-9-306. Deposit of fees.
37-9-307 through 37-9-310 reserved.
37-9-311. Repealed.
37-9-312. Violation.

Chapter Cross-References

Medical services and boarding homes for the aged, Title 7, ch. 34.

Hospitals and related facilities, Title 50, ch. 5.

Duty of nursing home administrator to report violation of Montana Elder and Persons With Developmental Disabilities Abuse Prevention Act, 52-3-811.

Community-based nursing homes — Montana Mental Health Nursing Care Center, Title 53, ch. 21, part 4.

Part 1
General

37-9-101. Definitions. Unless the context requires otherwise, in this chapter, the following definitions apply:

(1) "Board" means the board of nursing home administrators provided for in 2-15-1845.

(2) "Department" means the department of commerce provided for in Title 2, chapter 15, part 18.

(3) "Long-term care facility" means a skilled nursing facility, nursing home, or intermediate care facility as defined for licensing purposes under state law or the rules for long-term care facilities of the department of public health and human services, whether proprietary or nonprofit, including facilities owned or administered by the state or a political subdivision.

(4) "Nursing home administrator" means a person who administers, manages, supervises, or is in general administrative charge of a long-term care facility, whether the individual has an ownership interest in the facility and whether the individual's functions and duties are shared with one or more other individuals.

History: En. Sec. 1, Ch. 363, L. 1969; amd. Sec. 1, Ch. 483, L. 1973; amd. Sec. 305, Ch. 350, L. 1974; R.C.M. 1947, 66-3101; amd. Sec. 3, Ch. 274, L. 1981; amd. Sec. 60, Ch. 418, L. 1995; amd. Sec. 43, Ch. 429, L. 1995; amd. Sec. 89, Ch. 546, L. 1995.

Part 2
Board of Nursing Home Administrators

Part Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

Allocation of boards for administrative purposes, 2-15-121.

Quasi-judicial boards, 2-15-124.

Board established, 2-15-1845.

Duties of Department, Director, and boards, Title 37, ch. 1, part 1.

37-9-201. Organization and compensation of board. (1) The board shall elect from its membership a chairman, vice-chairman, and secretary-treasurer and shall adopt rules to govern its proceedings.

(2) Each board member shall receive compensation and travel expenses as provided for in 37-1-133.

History: En. Sec. 7, Ch. 363, L. 1969; amd. Sec. 45, Ch. 439, L. 1975; R.C.M. 1947, 66-3107; amd. Sec. 14, Ch. 474, L. 1981.

37-9-202. Exclusive jurisdiction of board. The board shall have exclusive authority to determine the qualifications, skill, and fitness of any person to serve as an administrator of a nursing home under the provisions of this chapter, and the holder of a license under the provisions of this chapter shall be deemed qualified to serve as the administrator of a nursing home for all purposes.

History: En. Sec. 8, Ch. 363, L. 1969; R.C.M. 1947, 66-3108.

37-9-203. Duties of board. The board shall:

(1) develop, impose, and enforce standards that must be met by individuals in order to register and receive a license as a nursing home administrator, designed to ensure that nursing home administrators are individuals of good character and otherwise suitable and, by training or experience in the field of institutional administration, are qualified to serve as nursing home administrators;

(2) develop and apply appropriate techniques, including examination and investigation, for determining whether individuals meet the standards;

(3) authorize the department to register and issue licenses to individuals, after application of the techniques, determined to meet the standards;

(4) establish and implement procedures designed to ensure that individuals registered and licensed as nursing home administrators will, during the period that they serve, comply with the requirements of the standards;

(5) conduct a continuing study and investigation of nursing home administrators within the state with a view to the improvement of the standards imposed for the licensing of administrators and of procedures and methods for the enforcement of the standards with respect to nursing home administrators.

History: En. Sec. 9, Ch. 363, L. 1969; amd. Sec. 6, Ch. 483, L. 1973; amd. Sec. 310, Ch. 350, L. 1974; R.C.M. 1947, 66-3109(part); amd. Sec. 44, Ch. 429, L. 1995.

Part 3
Licensing

Part Cross-References

Contested case as including licensing, 2-4-102.

Contested case procedure, Title 2, ch. 4, part 6.

Licensing to follow contested case procedure, 2-4-631.

Suspension of license fees for persons in military service, 10-1-605.

Duty of Department to administer and grade examinations, 37-1-101.

Duty of Board to adopt and enforce licensing and certification rules, 37-1-131.

Licensing boards to establish fees commensurate with costs, 37-1-134.

Licensing investigation and review — record access, 37-1-135.

Grounds for disciplinary action as grounds for license denial — conditions to new licenses, 37-1-137.

Licensure of criminal offenders, Title 37, ch. 1, part 2.

Nondiscrimination in licensing, 49-3-204.

37-9-301. Qualifications for licensure — examination. (1) The department shall register and issue licenses to qualified persons as nursing home administrators, and the board shall establish qualification criteria for nursing home administrators. No registration or license shall be issued to a person as a nursing home administrator unless he:

(a) is of good character, of sound physical and mental health, has received a high school diploma or its equivalent; and

(b) (i) has satisfactorily completed a course of instruction and training prescribed by the board, which shall be designed and administered to present sufficient knowledge of the needs properly served by long-term care facilities, laws governing the operation of long-term care facilities and the protection of the interests of patients, and the elements of good nursing home administration; or

(ii) has presented evidence satisfactory to the board of sufficient education, training, or experience, or a combination of education, training, and experience, in the fields referred to in subsection (1)(b)(i) to administer, supervise, and manage a long-term care facility; and

(c) has passed an examination designed to test for competence in the subject matters referred to in subsection (1)(b)(i).

(2) The minimum standards for qualification shall comply with the requirements, if any, set forth in Title XIX of the Social Security Act, Public Law 90-248, as amended.

History: En. Sec. 3, Ch. 363, L. 1969; amd. Sec. 10, Ch. 168, L. 1971; amd. Sec. 3, Ch. 483, L. 1973; amd. Sec. 307, Ch. 350, L. 1974; R.C.M. 1947, 66-3103; amd. Sec. 1, Ch. 464, L. 1989.

37-9-302. Department to license pursuant to board rules — nontransferability. (1) The department shall register and license nursing home administrators under the rules adopted by the board.

(2) A nursing home administrator's registration and license is not transferable and is valid until surrendered for cancellation, suspended, or revoked for violation of this chapter or any other laws or rules relating to the proper administration and management of a long-term care facility.

History: En. Sec. 4, Ch. 363, L. 1969; amd. Sec. 4, Ch. 483, L. 1973; amd. Sec. 308, Ch. 350, L. 1974; R.C.M. 1947, 66-3104(part); amd. Sec. 45, Ch. 429, L. 1995.

37-9-303. Repealed. Sec. 128, Ch. 429, L. 1995.

History: En. Sec. 11, Ch. 363, L. 1969; amd. Sec. 311, Ch. 350, L. 1974; R.C.M. 1947, 66-3111.

37-9-304. Fees. (1) Each person who applies for licensure, whether by waiver, examination, or reciprocation, shall pay a fee prescribed by the board at the time of application.

(2) Each person licensed as a nursing home administrator shall pay a license fee in an amount fixed by the board. A license expires on a date set by department rule and must be renewed upon timely payment of the license fee.

(3) The fee for issuing a duplicate license must be fixed by the board.

History: En. Sec. 5, Ch. 363, L. 1969; amd. Sec. 5, Ch. 483, L. 1973; R.C.M. 1947, 66-3105; amd. Sec. 22, Ch. 345, L. 1981; amd. Sec. 2, Ch. 390, L. 1983; amd. Sec. 46, Ch. 429, L. 1995; amd. Sec. 15, Ch. 492, L. 1997.

37-9-305. Renewal of registration and license. Each holder of a nursing home administrator's registration and license shall renew it by payment of the required fee for the next subsequent period prior to the expiration date of the currently valid registration and license. Renewals of registrations or licenses must be granted as a matter of course. However, if the board finds, after notice and hearing, that the applicant has acted or failed to act in a manner or under circumstances that would constitute grounds for discipline, it may not issue the renewal.

History: En. Sec. 10, Ch. 363, L. 1969; amd. Sec. 7, Ch. 483, L. 1973; R.C.M. 1947, 66-3110; amd. Sec. 3, Ch. 390, L. 1983; amd. Sec. 47, Ch. 429, L. 1995; amd. Sec. 16, Ch. 492, L. 1997.

37-9-306. Deposit of fees. Fees collected by the department under this chapter shall be deposited in the state special revenue fund for the use of the board, subject to 37-1-101(6). This fund may be used to pay the compensation and expenses of members of the board and other expenses necessary to administer this chapter.

History: En. Sec. 6, Ch. 363, L. 1969; amd. Sec. 309, Ch. 350, L. 1974; R.C.M. 1947, 66-3106; amd. Sec. 1, Ch. 277, L. 1983.

37-9-307 through 37-9-310 reserved.

37-9-311. Repealed. Sec. 128, Ch. 429, L. 1995.

History: (1), (2)En. Sec. 9, Ch. 363, L. 1969; amd. Sec. 6, Ch. 483, L. 1973; amd. Sec. 310, Ch. 350, L. 1974; Sec. 66-3109, R.C.M. 1947; (3)En. Sec. 4, Ch. 363, L. 1969; amd. Sec. 4, Ch. 483, L. 1973; amd. Sec. 308, Ch. 350, L. 1974; Sec. 66-3104, R.C.M. 1947; R.C.M. 1947, 66-3104(part), 66-3109(part).

37-9-312. Violation. It shall be unlawful for any person to act or serve in the capacity of a nursing home administrator unless he is the holder of a registration and license as a nursing home administrator, issued in accordance with the provisions of this chapter. A person who violates the provisions of this chapter shall be guilty of a misdemeanor and upon conviction shall be punished by a fine of not more than $500 or by imprisonment for not more than 6 months or by both such fine and imprisonment.

History: En. Sec. 12, Ch. 363, L. 1969; amd. Sec. 8, Ch. 483, L. 1973; R.C.M. 1947, 66-3112.

CHAPTER 10

OPTOMETRY

Part 1 — General

37-10-101. Definitions — practice of optometry.
37-10-102. Exemptions.
37-10-103. Use of drugs not prohibited by pharmacy law.
37-10-104. Public agencies — discrimination prohibited.
37-10-105. Purpose.

Part 2 — Board of Optometry

37-10-201. Organization — meetings.
37-10-202. Rulemaking power — seal.
37-10-203. Compensation of members — expenses — deposit of moneys.
37-10-204. Repealed.

Part 3 — Licensing—Certificates of Registration

37-10-301. Certificate required for practice — unlawful acts — injunction.
37-10-302. Examination — qualifications — application — issuance of certificate.
37-10-303. Repealed.
37-10-304. Course in use of diagnostic and therapeutic drugs required.
37-10-305. Repealed.
37-10-306. Certificate to be displayed in office.
37-10-307. Renewal — fee.
37-10-308. Repealed.
37-10-309 and 37-10-310 reserved.
37-10-311. Repealed.
37-10-312. Duty of county attorneys and attorney general.
37-10-313. Penalty for violations — deposit of fines.

Chapter Cross-References

Professional service corporations, Title 35, ch. 4.

Optometrist to report child abuse, 41-3-201.

Duty of optometrist to report violation of Montana Elder and Persons With Developmental Disabilities Abuse Prevention Act, 52-3-811.

Part 1
General

37-10-101. Definitions — practice of optometry. (1) The practice of optometry is the profession constituting the art and science of visual care and includes any one of the following acts:

(a) the optometric examination or optometric diagnosis of all of those physiological or anatomical parts or functions that consummate the process of human vision to ascertain the presence of abnormal conditions or functions that may be optometrically diagnosed, corrected, remedied, or relieved;

(b) the employment of any optometric means for the purpose of detecting any condition of the process of vision that may have any significance in a complete optometric eye and vision examination, including the employment and administration of drugs topically applied for examination purposes, limited to cycloplegics, mydriatics, topical anesthetics, dyes such as fluorescein, and for emergency use only, miotics;

(c) the application or prescription of ophthalmic lenses, contact lenses, prisms, orthoptics, visual training, and any physical, mechanical, or physiological therapy and the furnishing or application of any prosthetic or therapeutic devices for the correction or relief of visual anomalies;

(d) the administration, dispensation, and prescription of the oral analgesics codeine, propoxyphene, hydrocodone, and dihydrocodeine, alone or in combination with nonscheduled or nonregulated drugs; and

(e) the administration, dispensation, and prescription of those drugs approved by the board for use in ocular treatment limited to the anterior segment of the eye and adnexa. Glaucoma may be treated.

(2) Subsection (1) does not prohibit an optometrist from removing from the eye or adnexa a foreign body that is not intraocular.

(3) Subsection (1) does not allow an optometrist to perform surgery or laser surgery for any purpose.

(4) Unless the context requires otherwise, in this chapter:

(a) "board" means the board of optometry provided for in 2-15-1846; and

(b) "department" means the department of commerce provided for in Title 2, chapter 15, part 18.

History: (1), (2)En. Ch. 138, L. 1907; Sec. 1607, Rev. C. 1907; re-en. Sec. 3155, R.C.M. 1921; re-en. Sec. 3155, R.C.M. 1935; amd. Sec. 1, Ch. 252, L. 1959; amd. Sec. 1, Ch. 361, L. 1977; Sec. 66-1301, R.C.M. 1947; (3)En. 66-1301.1 by Sec. 129, Ch. 350, L. 1974; Sec. 66-1301.1, R.C.M. 1947; R.C.M. 1947, 66-1301, 66-1301.1; amd. Sec. 3, Ch. 274, L. 1981; amd. Sec. 2, Ch. 588, L. 1987; amd. Sec. 3, Ch. 121, L. 1993; amd. Sec. 1, Ch. 306, L. 1993; amd. Sec. 1, Ch. 34, L. 1999.

Compiler's Comments

1999 Amendment: Chapter 34 in (1)(b) near beginning after "optometric means" deleted "excluding the use of surgery"; in (1)(c) at end after "anomalies" deleted "excluding surgery"; in (1)(e) near middle of first sentence before "drugs" deleted "topical" and in second sentence after "Glaucoma may" deleted "not"; inserted (3) clarifying that the section does not allow an optometrist to perform surgery; and made minor changes in style. Amendment effective October 1, 1999.

Cross-References

Exemptions from physician's licensing requirements, 37-3-103.

37-10-102. Exemptions. Nothing in this chapter shall be construed to apply to:

(1) physicians and surgeons authorized to practice under the laws of the state of Montana;

(2) a person employed in the office of and acting under the direct personal supervision of a physician or surgeon;

(3) an optician performing the required mechanical work under an order or prescription signed by a duly licensed physician, surgeon, or optometrist;

(4) commissioned officers of the armed forces of the United States performing functions of this chapter in the line of their regular duty; or

(5) persons who sell spectacles or eyeglasses without attempting to traffic upon assumed skill in adapting them to the eye.

History: Ap. p. Ch. 138, L. 1907; Sec. 1621, Rev. C. 1907; re-en. Sec. 3169, R.C.M. 1921; re-en. Sec. 3169, R.C.M. 1935; amd. Sec. 6, Ch. 252, L. 1959; amd. Sec. 1, Ch. 512, L. 1977; Sec. 66-1316, R.C.M. 1947; Ap. p. Ch. 138, L. 1907; Sec. 1608, Rev. C. 1907; re-en. Sec. 3156, R.C.M. 1921; amd. Sec. 1, Ch. 171, L. 1925; re-en. Sec. 3156, R.C.M. 1935; amd. Sec. 1, Ch. 130, L. 1939; amd. Sec. 2, Ch. 252, L. 1959; amd. Sec. 1, Ch. 88, L. 1967; amd. Sec. 130, Ch. 350, L. 1974; Sec. 66-1302, R.C.M. 1947; R.C.M. 1947, 66-1302(part), 66-1316.

37-10-103. Use of drugs not prohibited by pharmacy law. The use of drugs by a licensed optometrist as stated in 37-10-101 is not prohibited by Title 37, chapter 7.

History: En. 66-1301.2 by Sec. 2, Ch. 361, L. 1977; R.C.M. 1947, 66-1301.2; amd. Sec. 3, Ch. 588, L. 1987.

37-10-104. Public agencies — discrimination prohibited. All agencies of the state and its subdivisions administering relief, public assistance, public welfare assistance, social security health insurance, or other health service under the laws of this state shall accept the services of licensed optometrists for any service covered by their licenses rendered to any person receiving benefits from said agents or bodies and shall pay for such services in the same manner as other ocular practitioners rendering similar services. None of the governmental agencies or agents, officials, or employees thereof, including the public schools, shall, in the performance of their duties, discriminate in any way among licensed ocular practitioners.

History: En. 66-1317 by Sec. 7, Ch. 252, L. 1959; R.C.M. 1947, 66-1317.

Cross-References

Illegal discrimination, Title 49, ch. 2.

Governmental code of fair practices, Title 49, ch. 3.

37-10-105. Purpose. The legislature finds that the practice of the profession of optometry is a privilege and is not a natural right of individuals. The legislature considers it necessary, in the interests of protecting the public health, safety, and welfare and in order to provide for the optometric needs of the public, to provide laws and delegate rulemaking authority regarding the granting of licenses and their subsequent use so that the public is protected from the unprofessional, improper, unauthorized, and unqualified practice of optometry.

History: En. Sec. 2, Ch. 121, L. 1993.

Part 2

Board of Optometry

Part Cross-References

Right to know, Art. II, sec. 9, Mont. Const.

Seal defined, 1-4-201.

Manner of making seal, 1-4-202.

Open meetings, Title 2, ch. 3, part 2.

Meeting defined, 2-3-202.

Adoption and publication of rules, Title 2, ch. 4, part 3.

Allocation of boards for administrative purposes, 2-15-121.

Quasi-judicial boards, 2-15-124.

Board established, 2-15-1846.

Duties of Department, Director, and boards, Title 37, ch. 1, part 1.

Duty of Department to provide facilities, 37-1-101.

Disrupting meeting as disorderly conduct, 45-8-101.

37-10-201. Organization — meetings. The board shall annually choose from its members a president and secretary, both of whom may administer oaths and take affidavits. The board shall meet at least once each year, at Helena or some other place within the state designated by the president and, in addition, whenever the president and secretary call a meeting at a location within the state. The department shall keep a record of the proceedings of the board, which must be open to public inspection.

History: En. Ch. 138, L. 1907; Sec. 1610, Rev. C. 1907; re-en. Sec. 3158, R.C.M. 1921; amd. Sec. 3, Ch. 171, L. 1925; amd. Sec. 1, Ch. 44, L. 1927; re-en. Sec. 3158, R.C.M. 1935; amd. Sec. 132, Ch. 350, L. 1974; R.C.M. 1947, 66-1304; amd. Sec. 4, Ch. 121, L. 1993.

37-10-202. Rulemaking power — seal. (1) The board may adopt rules for the regulation, conduct, supervision, and procedure governing all applicants for certificates of registration as optometrists and the practice of optometry not inconsistent with the provisions of this chapter.

(2) The board shall have a common seal.

History: En. Ch. 138, L. 1907; Sec. 1609, Rev. C. 1907; re-en. Sec. 3157, R.C.M. 1921; amd. Sec. 2, Ch. 171, L. 1925; re-en. Sec. 3157, R.C.M. 1935; amd. Sec. 2, Ch. 130, L. 1939; amd. Sec. 131, Ch. 350, L. 1974; R.C.M. 1947, 66-1303.

37-10-203. Compensation of members — expenses — deposit of moneys. (1) Each member of the board is entitled to receive compensation and travel expenses as provided for in 37-1-133.

(2) Money collected by the department shall be deposited in the state special revenue fund for the use of the board, subject to 37-1-101(6).

History: En. Ch. 138, L. 1907; Sec. 1617, Rev. C. 1907; re-en. Sec. 3165, R.C.M. 1921; amd. Sec. 5, Ch. 171, L. 1925; re-en. Sec. 3165, R.C.M. 1935; amd. Sec. 5, Ch. 252, L. 1959; amd. Sec. 121, Ch. 147, L. 1963; amd. Sec. 23, Ch. 93, L. 1969; amd. Sec. 136, Ch. 350, L. 1974; amd. Sec. 32, Ch. 439, L. 1975; R.C.M. 1947, 66-1311; amd. Sec. 15, Ch. 474, L. 1981; amd. Sec. 1, Ch. 277, L. 1983.

37-10-204. Repealed. Sec. 128, Ch. 429, L. 1995.

History: En. Sec. 6, Ch. 588, L. 1987.

Part 3

Licensing — Certificates of Registration

Part Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

Licensing to follow contested case procedure, 2-4-631.

Suspension of license fees for persons in military service, 10-1-605.

Affidavits, Title 26, ch. 1, part 10.

Unfair trade practices and consumer protection, Title 30, ch. 14.

Duty of Department to administer and grade examinations, 37-1-101.

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Reporting disciplinary actions against licensees, 37-1-105.

Duty of Board to adopt and enforce licensing and certification rules, 37-1-131.

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Disciplinary authority of boards — injunctions, 37-1-136.

Grounds for disciplinary action as grounds for license denial — conditions to new licenses, 37-1-137.

Licensure of criminal offenders, Title 37, ch. 1, part 2.

Nondiscrimination in licensing, 49-3-204.

37-10-301. Certificate required for practice — unlawful acts — injunction. (1) It is unlawful for a person to:

(a) practice optometry in this state unless that person has first obtained a certificate of registration;

(b) sell, barter, or offer to sell or barter a certificate of registration issued by the department;

(c) purchase or procure by barter a certificate of registration with intent to use it as evidence of the holder's qualification to practice optometry;

(d) materially alter with fraudulent intent a certificate of registration;

(e) use or attempt to use a certificate of registration that has been purchased, fraudulently issued, counterfeited, or materially altered as a valid certificate of registration;

(f) practice optometry under a false or assumed name;

(g) willfully make a materially false statement in an application for a certificate of registration;

(h) advertise by displaying a sign or by otherwise claiming to be an optometrist without having at the time a valid certificate of registration;

(i) replace or duplicate ophthalmic lenses with or without a prescription or to dispense ophthalmic lenses from prescriptions without having at the time a valid certificate of registration as an optometrist; however, this subsection does not prevent an optical mechanic from:

(i) doing the merely mechanical work on an ophthalmic lens that is ordered on a prescription signed by a registered optometrist and is dispensed only by the optometrist or a person employed by the optometrist and who does so in the office of and under the direct personal supervision of an optometrist; or

(ii) replacing or duplicating an existing lens for glasses;

(j) take or make measurements for the purpose of fitting or adapting ophthalmic lenses to the human eye without having at the time a valid certificate of registration. A person who takes or makes measurements or uses mechanical devices for this purpose or who, in the sale of spectacles, eyeglasses, or lenses, uses in the testing of the eyes lenses other than the lenses actually sold is practicing optometry. However, this section does not apply to the prescriptions of qualified optometrists when sent to a recognized optical laboratory.

(k) measure, fit, or adapt a lens to direct, contiguous contact to the human eyeball without having at the time a valid certificate of registration as an optometrist.

(2) When the board has reasonable cause to believe that a person is violating this section or a rule issued under this chapter, it may, in addition to other remedies provided in this chapter, bring an action for injunctive relief in

district court in the county where the violation occurs to enjoin the person from engaging in or continuing the violation. The department may employ legal counsel to prosecute these actions. In these actions and on notice and hearing, an order or judgment may be entered awarding a temporary restraining order or final injunction as considered proper by the judge of the district court in the county where the violation occurred.

History: **En. Ch. 138, L. 1907; Sec. 1608, Rev. C. 1907; re-en. Sec. 3156, R.C.M. 1921; amd. Sec. 1, Ch. 171, L. 1925; re-en. Sec. 3156, R.C.M. 1935; amd. Sec. 1, Ch. 130, L. 1939; amd. Sec. 2, Ch. 252, L. 1959; amd. Sec. 1, Ch. 88, L. 1967; amd. Sec. 130, Ch. 350, L. 1974; R.C.M. 1947, 66-1302(part); amd. Sec. 3, Ch. 66, L. 1981; amd. Sec. 4, Ch. 543, L. 1981; amd. Sec. 5, Ch. 121, L. 1993.**

Cross-References

Willfully defined, 1-1-204.

Issuance of injunctions on nonjudicial days, 3-1-302, 3-5-302.

Contempts, Title 3, ch. 1, part 5.

Injunctions, Rule 65, M.R.Civ.P. (see Title 25, ch. 20); Title 27, ch. 19.

37-10-302. Examination — qualifications — application — issuance of certificate. (1) The board shall adopt rules relative to and governing the qualifications of applicants for certificates of registration as optometrists. If the applicant does not meet the requirements of the rules, the applicant is not eligible to take an examination to practice optometry in this state. If the applicant meets the requirements of the rules, the applicant must pass an examination given by the national board of examiners in optometry on behalf of the department, subject to 37-1-101. Examinations must be practical in character and designed to ascertain the applicant's fitness to practice the profession of optometry and must be conducted in the English language. The department shall publish and distribute the examination requirements for a certificate to practice optometry in this state. The board may accept the grades an applicant has received in the written examinations given by the national board of examiners in optometry.

(2) A person is not eligible to receive a certificate of registration unless that person is 18 years of age or older and of good moral character.

(3) A person is not eligible to receive a certificate of registration unless that person has certificates of graduation from an accredited high school and from a school of optometry in which the practice and science of optometry is taught in a course of study covering 8 semesters or 4 years of actual attendance and that is accredited by the international association of boards of examiners in optometry.

(4) A person desiring a certificate of registration shall file an application, in the manner prescribed by the board, and pay a fee prescribed by the board.

(5) A person who successfully passes the examination administered by the national board of examiners in optometry and who has met the requirements for qualification as an optometrist must be registered in a register kept by the department and, on the payment of a fee prescribed by the board, must receive a certificate of registration signed by the members of the board.

History: **En. Ch. 138, L. 1907; Sec. 1611, Rev. C. 1907; amd. Sec. 1, Ch. 128, L. 1917; re-en. Sec. 3159, R.C.M. 1921; amd. Sec. 4, Ch. 171, L. 1925; re-en. Sec. 3159, R.C.M. 1935; amd. Sec. 3, Ch. 130, L. 1939; amd. Sec. 3, Ch. 252, L. 1959; amd. Sec. 24, Ch. 94, L. 1973; amd. Sec. 133, Ch. 350, L. 1974; R.C.M. 1947, 66-1305(1) thru (5); amd. Sec. 3, Ch. 241, L. 1981; amd. Sec. 23, Ch. 345, L. 1981; amd. Sec. 6, Ch. 121, L. 1993.**

37-10-303. Repealed. Sec. 128, Ch. 429, L. 1995.

History: **En. Ch. 138, L. 1907; Sec. 1611, Rev. C. 1907; amd. Sec. 1, Ch. 128, L. 1917; re-en. Sec. 3159, R.C.M. 1921; amd. Sec. 4, Ch. 171, L. 1925; re-en. Sec. 3159, R.C.M. 1935; amd. Sec. 3, Ch. 130, L. 1939; amd. Sec. 3, Ch. 252, L. 1959; amd. Sec. 24, Ch. 94, L. 1973; amd. Sec. 133, Ch. 350, L. 1974; R.C.M. 1947, 66-1305(6); amd. Sec. 7, Ch. 121, L. 1993.**

37-10-304. Course in use of diagnostic and therapeutic drugs required. (1) (a) In addition to the requirements of 37-10-302, each person desiring to commence the practice of optometry shall satisfactorily complete a course prescribed by the board of medical examiners with consultation and approval by the board of optometrists with particular emphasis on the topical application of diagnostic agents to the eye for the purpose of examination of the human eye and the analysis of ocular functions.

(b) A person presently licensed to practice optometry who wishes to employ diagnostic agents must satisfactorily complete a course referred to in subsection (1)(a) and must pass an examination as provided in subsection (1)(d).

(c) The course referred to in subsection (1)(a) must be conducted by an institution accredited by a regional or professional accreditation organization which is recognized or approved by the national commission on accrediting or the United States commissioner of education. The course must also be approved by the board.

(d) The board shall provide for an examination in competency in the use of diagnostic drugs and shall issue a certificate to those applicants who pass the examination.

(2) (a) Each person desiring to commence the practice of optometry shall:

(i) pass an examination, of the international association of boards of examiners in optometry, on the diagnosis, treatment, and management of ocular disease; or

(ii) take a course and pass an examination in the diagnosis, treatment, and management of ocular diseases. The course and examination must be conducted by an institution accredited by a regional or professional accreditation organization which is recognized or approved by the national commission on accrediting or the United States commissioner of education. The course and examination must also be approved by the board.

(b) A person presently licensed to practice optometry who wishes to employ therapeutic pharmaceutical agents must meet the requirements of subsection (2)(a).

(c) The board shall:

(i) provide for an examination in competency in the diagnosis, treatment, and management of therapeutic pharmaceutical agents; and

(ii) issue a certificate to an applicant who passes the examination.

History: **En. 66-1305.1 by Sec. 3, Ch. 361, L. 1977; R.C.M. 1947, 66-1305.1; amd. Sec. 4, Ch. 588, L. 1987; amd. Sec. 48, Ch. 429, L. 1995.**

Cross-References

Dispensing of drugs by health care practitioners, Title 37, ch. 2, part 1.

Board of Medical Examiners, Title 37, ch. 3, part 2.

Dangerous drugs, Title 45, ch. 9.

37-10-305. Repealed. Sec. 4, Ch. 66, L. 1981.

History: **En. Ch. 138, L. 1907; Sec. 1614, Rev. C. 1907; re-en. Sec. 3162, R.C.M. 1921; re-en. Sec. 3162, R.C.M. 1935; amd. Sec. 4, Ch. 130, L. 1939; amd. Sec. 135, Ch. 350, L. 1974; R.C.M. 1947, 66-1308.**

37-10-306. Certificate to be displayed in office. Every person to whom a certificate of examination or registration is granted shall display the same in a conspicuous part of his office wherein the practice of optometry is conducted.

History: En. Ch. 138, L. 1907; Sec. 1616, Rev. C. 1907; re-en. Sec. 3164, R.C.M. 1921; re-en. Sec. 3164, R.C.M. 1935; R.C.M. 1947, 66-1310.

37-10-307. Renewal — fee. A registered optometrist who desires to continue the practice of optometry in this state shall, before the license expiration date established by rule of the department, pay to the department a renewal fee prescribed by the board in return for which a renewal of registration must be issued. If a person fails or neglects to procure a renewal of registration, the person's certificate of registration must be revoked by the board. However, a certificate of registration may not be revoked without 90 days' notice having been given to the delinquent, who within this period may renew the certificate of registration on the payment of the renewal fee with a penalty prescribed by the board.

History: En. Ch. 138, L. 1907; Sec. 1613, Rev. C. 1907; amd. Sec. 2, Ch. 128, L. 1917; re-en. Sec. 3161, R.C.M. 1921; amd. Sec. 4 1/2, Ch. 171, L. 1925; re-en. Sec. 3161, R.C.M. 1935; amd. Sec. 4, Ch. 252, L. 1959; amd. Sec. 120, Ch. 147, L. 1963; amd. Sec. 1, Ch. 75, L. 1971; amd. Sec. 134, Ch. 350, L. 1974; R.C.M. 1947, 66-1307; amd. Sec. 24, Ch. 345, L. 1981; amd. Sec. 4, Ch. 390, L. 1983; amd. Sec. 17, Ch. 492, L. 1997.

37-10-308. Repealed. Sec. 128, Ch. 429, L. 1995.

History: En. 66-1318 by Sec. 1, Ch. 79, L. 1971; amd. Sec. 139, Ch. 350, L. 1974; R.C.M. 1947, 66-1318; amd. Sec. 8, Ch. 121, L. 1993.

37-10-309 and 37-10-310 reserved.

37-10-311. Repealed. Sec. 128, Ch. 429, L. 1995.

History: (1) thru (3)En. Ch. 138, L. 1907; Sec. 1618, Rev. C. 1907; amd. Sec. 3, Ch. 128, L. 1917; re-en. Sec. 3166, R.C.M. 1921; amd. Sec. 6, Ch. 171, L. 1925; re-en. Sec. 3166, R.C.M. 1935; amd. Sec. 5, Ch. 130, L. 1939; amd. Sec. 137, Ch. 350, L. 1974; Sec. 66-1312, R.C.M. 1947; (4)En. Sec. 3166-A by Sec. 2, Ch. 44, L. 1927; re-en. Sec. 3166.1, R.C.M. 1935; Sec. 66-1313, R.C.M. 1947; R.C.M. 1947, 66-1312, 66-1313; amd. Sec. 5, Ch. 543, L. 1981; amd. Sec. 5, Ch. 588, L. 1987; amd. Sec. 9, Ch. 121, L. 1993; amd. Sec. 13, Ch. 619, L. 1993.

37-10-312. Duty of county attorneys and attorney general. It is the duty of a county attorney of a county wherein a violation under this chapter, except 37-10-104, is alleged to have occurred to prosecute such violation in the district court in said county. The state attorney general shall appear as counsel for the board in the state supreme court.

History: En. Ch. 138, L. 1907; Sec. 1620, Rev. C. 1907; re-en. Sec. 3168, R.C.M. 1921; re-en. Sec. 3168, R.C.M. 1935; amd. Sec. 1, Ch. 204, L. 1965; R.C.M. 1947, 66-1315.

Cross-References

Duties of Attorney General, 2-15-501.

Prosecutorial duties of County Attorney, 7-4-2712.

Duties of County Attorney relating to state matters, 7-4-2716.

37-10-313. Penalty for violations — deposit of fines. A person who violates this chapter, except 37-10-104, or the rules of the board is guilty of a misdemeanor and on conviction shall be fined not less than $200 and not more than $500 or imprisoned in the county jail not exceeding 6 months or both fined and imprisoned. Fines collected, except those collected by a justice's court, shall be deposited in the state special revenue fund for the use of the board, subject to 37-1-101(6).

History: **En. Ch. 138, L. 1907; Sec. 1619, Rev. C. 1907; re-en. Sec. 3167, R.C.M. 1921; amd. Sec. 8, Ch. 171, L. 1925; re-en. Sec. 3167, R.C.M. 1935; amd. Sec. 6, Ch. 130, L. 1939; amd. Sec. 122, Ch. 147, L. 1963; amd. Sec. 138, Ch. 350, L. 1974; R.C.M. 1947, 66-1314; amd. Sec. 1, Ch. 277, L. 1983; amd. Sec. 25, Ch. 557, L. 1987.**

Cross-References

Collection and disposition of fines, penalties, forfeitures, and fees, 3-10-601.

Criminal responsibility and accountability of corporations, 45-2-311, 45-2-312.

CHAPTER 11

PHYSICAL THERAPY

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Chapter Cross-References

Professional service corporations, Title 35, ch. 4.

Part 1

General

37-11-101. Definitions. Unless the context requires otherwise, in this chapter, the following definitions apply:

(1) "Board" means the board of physical therapy examiners provided for in 2-15-1858.

(2) "Department" means the department of commerce provided for in Title 2, chapter 15, part 18.

(3) "Hearing" means the adjudicative proceeding concerning the issuance, denial, suspension, or revocation of a license, after which the appropriate action toward an applicant or licensee is to be determined by the board.

(4) "Physical therapist" or "physiotherapist" means a person who practices physical therapy.

(5) "Physical therapist assistant" or "assistant" means a person who:

(a) is a graduate of an accredited physical therapist assistant curriculum approved by the board;

(b) assists a physical therapist in the practice of physical therapy but who may not make evaluations or design treatment plans; and

(c) is supervised by a licensed physical therapist as described in 37-11-105.

(6) "Physical therapist assistant student" means a person who is enrolled in an accredited physical therapist assistant curriculum and who as part of the clinical and educational training is practicing under the supervision of a licensed physical therapist as described in 37-11-105.

(7) "Physical therapy" means the evaluation, treatment, and instruction of human beings to detect, assess, prevent, correct, alleviate, and limit physical disability, bodily malfunction and pain, injury, and any bodily or mental conditions by the use of therapeutic exercise, prescribed topical medications, and rehabilitative procedures for the purpose of preventing, correcting, or alleviating a physical or mental disability.

(8) "Physical therapy aide" or "aide" means a person who aids in the practice of physical therapy, whose activities require on-the-job training, and who is supervised by a licensed physical therapist or a licensed physical therapist assistant as described in 37-11-105.

(9) "Physical therapy practitioner", "physical therapy specialist", "physiotherapy practitioner", or "manual therapists" are equivalent terms, and any derivation of the above or any letters implying the above are equivalent terms. Any reference to any one of the terms in this chapter includes the others but does not include certified corrective therapists or massage therapists.

(10) "Physical therapy student" or "physical therapy intern" means an individual who is enrolled in an accredited physical therapy curriculum, who, as part of the individual's professional, educational, and clinical training, is practicing in a physical therapy setting, and who is supervised by a licensed physical therapist as described in 37-11-105.

(11) "Topical medications" means medications applied locally to the skin and includes only medications listed in 37-11-106(2) for which a prescription is required under state or federal law.

History: En. Sec. 1, Ch. 39, L. 1961; amd. Sec. 241, Ch. 350, L. 1974; R.C.M. 1947, 66-2501(part); amd. Secs. 3, 5, Ch. 491, L. 1979; amd. Sec. 3, Ch. 274, L. 1981; amd. Sec. 1, Ch. 237, L. 1991; amd. Sec. 1, Ch. 253, L. 1995.

37-11-102. Exemptions. This chapter may not be construed to limit or regulate any other business or profession or any services rendered or performed in connection with another business or profession, including osteopathy, chiropractic, chiropractic physiotherapy, or massage therapists, to the extent they do massage.

History: **En. Sec. 13, Ch. 39, L. 1961; R.C.M. 1947, 66-2513(part); amd. Sec. 4, Ch. 237, L. 1991.**

37-11-103. Restrictions on scope of practice. Nothing in this chapter shall be construed as authorizing a physical therapist, whether licensed or not, to practice medicine, osteopathy, or chiropractic, dentistry, or podiatry; nor shall Title 37, chapter 11, be construed to limit or regulate any other business or profession or any services rendered or performed in connection with physical therapy.

History: **En. Sec. 13, Ch. 39, L. 1961; R.C.M. 1947, 66-2513(part); amd. Sec. 7, Ch. 491, L. 1979.**

Cross-References

Exemptions from physician's licensing requirements, 37-3-103.

37-11-104. Physical therapy — evaluation and treatment. (1) Physical therapy evaluation includes the administration, interpretation, and evaluation of tests and measurements of bodily functions and structures; the development of a plan of treatment; consultative, educational, and other advisory services; and instruction and supervision of supportive personnel.

(2) Treatment employs, for therapeutic effects, physical measures, activities and devices, for preventive and therapeutic purposes, exercises, rehabilitative procedures, massage, mobilization, and physical agents including but not limited to mechanical devices, heat, cold, air, light, water, electricity, and sound.

(3) The evaluation and treatment procedures listed in subsections (1) and (2) may be performed by a licensed physical therapist without referral.

History: **En. Sec. 4, Ch. 491, L. 1979; amd. Sec. 1, Ch. 240, L. 1981; amd. Sec. 3, Ch. 55, L. 1987.**

37-11-105. Supervision of physical therapist assistant, physical therapy aide, physical therapy student, or physical therapist assistant student. (1) A physical therapist assistant shall practice under the supervision of a licensed physical therapist who is responsible for and participates in a patient's care. This supervision requires the licensed physical therapist to make an onsite visit to the client at least once for every six visits made by the assistant or once every 2 weeks, whichever occurs first.

(2) A licensed physical therapist may not concurrently supervise more than two full-time assistants or the equivalent. This supervision does not require the presence of the assistant.

(3) A physical therapy aide shall practice under the onsite supervision of a licensed physical therapist or a licensed assistant. A licensed assistant may not concurrently supervise more than one full-time aide or the equivalent. A licensed physical therapist may not concurrently supervise more than four aides or the equivalent or two assistants and two aides or the equivalent.

(4) A physical therapy student or physical therapist assistant student shall practice with the onsite supervision of a licensed physical therapist.

History: **En. Sec. 6, Ch. 491, L. 1979; amd. Sec. 2, Ch. 253, L. 1995.**

37-11-106. Application and administration of topical medications — prescription, purchasing, and recordkeeping requirements. (1) A licensed physical therapist may apply or administer topical medications by:

(a) direct application;

(b) iontophoresis, a process whereby topical medications are applied through the use of electricity; or

(c) phonophoresis, a process whereby topical medications are applied through the use of ultrasound.

(2) A licensed physical therapist may apply or administer the following topical medications:

(a) bactericidal agents;

(b) debriding agents;

(c) anesthetic agents;

(d) anti-inflammatory agents;

(e) antispasmodic agents; and

(f) adrenocortico-steroids.

(3) Topical medications applied or administered by a physical therapist must be prescribed on a specific or standing basis by a licensed medical practitioner authorized to order or prescribe topical medications and must be purchased from a pharmacy certified under 37-7-321. Topical medications dispensed under this section must comply with packaging and labeling guidelines developed by the board of pharmacists under Title 37, chapter 7.

(4) Appropriate recordkeeping is required of a physical therapist who applies or administers topical medications as authorized in this section.

History: En. Sec. 2, Ch. 237, L. 1991.

37-11-107. Board adoption of protocols. The board, in consultation with the board of medical examiners and the board of pharmacy, shall by rule adopt written protocols for each class of topical medication listed in 37-11-106(2) for which a prescription is required under state or federal law. Protocols must include a description of each topical medication and its actions, indications, and contraindications, as well as the proper procedure and technique for the application or administration of the medication.

History: En. Sec. 3, Ch. 237, L. 1991.

Part 2

Duties of Board and Department

Part Cross-References

Right to know, Art. II, sec. 9, Mont. Const.

Power of agencies to issue subpoenas, 2-4-104.

Adoption and publication of rules, Title 2, ch. 4, part 3.

Public records, Title 2, ch. 6.

Prohibition on distribution or sale of mailing lists, 2-6-109.

Allocation of boards for administrative purposes, 2-15-121.

Quasi-judicial boards, 2-15-124.

Board established, 2-15-1859.

Subpoenas, Rule 45, M.R.Civ.P. (see Title 25, ch. 20); Title 26, ch. 2, part 1.

Arrest of witness for disobedience of subpoena, 26-2-106, 26-2-107.

Duties of Department, Director, and boards, Title 37, ch. 1, part 1.

37-11-201. General powers — rulemaking power — records. (1) The board may:

(a) adopt rules to carry this chapter into effect;

(b) grant, suspend, and revoke licenses;

(c) issue subpoenas requiring the attendance of witnesses or the production of books and papers;

(d) take any other disciplinary action necessary to protect the public.

(2) The board shall:

(a) examine applicants for licenses at reasonable places and times determined by the board;

(b) review the qualifications of applicants who are approved for examination for licensure;

(c) conduct written or computerized examinations that measure the qualifications of individual applicants along with any oral or practical examinations when determined by the board to be appropriate; and

(d) adopt rules to establish continuing education requirements of at least 20 hours biennially for license renewal for physical therapists and assistants.

(3) The department shall keep a record of the board's proceedings under this chapter and a register of persons licensed under it. The register must show the name of every licensed physical therapist and licensed assistant, the therapist's or assistant's last-known place of business and last-known place of residence, and the date of issue and the number of every license and certificate issued to a licensed physical therapist or licensed assistant.

(4) The department shall, during the month of April every year in which the renewal of licenses is required, compile a list of licensed physical therapists authorized to practice physical therapy in the state and shall mail, upon request, a copy of that list to the superintendent of every known hospital and every person licensed to practice medicine and surgery in the state. An interested person in the state is entitled to obtain a copy of the list on application to the department and payment of an amount not in excess of the cost of the list.

(5) The department may change addresses and surnames on the licensee's records only on the specific written request by the individual licensee.

History: En. Sec. 14, Ch. 39, L. 1961; amd. Sec. 249, Ch. 350, L. 1974; R.C.M. 1947, 66-2514; amd. Sec. 1, Ch. 449, L. 1979; amd. Sec. 8, Ch. 491, L. 1979; amd. Sec. 1, Ch. 115, L. 1991; amd. Sec. 3, Ch. 253, L. 1995; amd. Sec. 16, Ch. 481, L. 1997.

37-11-202. Repealed. Sec. 128, Ch. 429, L. 1995.

History: En. Sec. 15, Ch. 39, L. 1961; R.C.M. 1947, 66-2515; amd. Sec. 9, Ch. 491, L. 1979.

37-11-203. Travel expense — deposit of fees. (1) Each board member shall receive compensation and travel expenses as provided for in 37-1-133.

(2) All fees collected by the department must be deposited in the state special revenue account for the use of the board, subject to 37-1-101(6). The department shall keep an accurate account of funds received and expenditures made from the account.

History: En. Sec. 10, Ch. 491, L. 1979; amd. Sec. 16, Ch. 474, L. 1981; amd. Sec. 1, Ch. 277, L. 1983; amd. Sec. 4, Ch. 253, L. 1995.

Part 3
Licensing

Part Cross-References

Contested case as including licensing, 2-4-102.

Contested case procedure, Title 2, ch. 4, part 6.

Licensing to follow contested case procedure, 2-4-631.

Suspension of license fees for persons in military service, 10-1-605.

Recognition of out-of-state licenses during disaster or emergency, 10-3-204.

Duty of Department to investigate unethical conduct, 37-1-101.

Reporting disciplinary actions against licensees, 37-1-105.

Duty of Board to adopt and enforce licensing an certification rules, 37-1-131.

Licensing boards to establish fees commensurate with costs, 37-1-134.

Disciplinary authority of boards — injunctions, 37-1-136.

Licensing investigation and review — record access, 37-1-135.

Grounds for disciplinary action as grounds for license denial — conditions to new licenses, 37-1-137.

Licensure of criminal offenders, Title 37, ch. 1, part 2.

Nondiscrimination in licensing, 49-3-204.

37-11-301. License required for physical therapist and assistant — unauthorized representation as licensed therapist. (1) A person may not practice or purport to practice physical therapy without first obtaining a license under the provisions of this chapter.

(2) A person who is not licensed under this chapter as a physical therapist, whose license has been suspended or revoked, or whose license has lapsed and has not been revived and who uses the words or letters "L.P.T.", "Licensed Physical Therapist", "P.T.", "Physical Therapist", "R.P.T.", "Registered Physical Therapist", or any other letters, words, or insignia indicating or implying that the person is a licensed physical therapist or who in any way, orally or in writing or in print or by sign, directly or by implication, purports to be a physical therapist is guilty of a misdemeanor.

(3) A person who is not licensed as a physical therapist assistant in accordance with this chapter may not assist a physical therapist in the practice of physical therapy.

History: En. Sec. 11, Ch. 39, L. 1961; R.C.M. 1947, 66-2511; amd. Sec. 11, Ch. 491, L. 1979; amd. Sec. 5, Ch. 253, L. 1995.

37-11-302. False oath or fraudulent representation to obtain license. A person who makes a willfully false oath or affirmation in any case in which an oath or affirmation is required by this chapter or who obtains or attempts to obtain a license by any fraudulent representation shall be guilty of a misdemeanor.

History: En. Sec. 12, Ch. 39, L. 1961; R.C.M. 1947, 66-2512.

Cross-References

Oath defined, 1-1-201.

Oaths, Title 1, ch. 6.

Perjury, 45-7-201.

False swearing, 45-7-202.

37-11-303. Qualifications of applicants for license. (1) To be eligible for a license as a physical therapist, an applicant must:

(a) be of good moral character and at least 18 years of age;

(b) have graduated from an accredited school of physical therapy approved by the board; and

(c) pass to the satisfaction of the board a written or computerized examination prescribed by the board and, if considered necessary, an oral interview to determine the fitness of the applicant to practice as a physical therapist.

(2) To be eligible for a physical therapist assistant license, an applicant must:

(a) be of good moral character and at least 18 years of age;

(b) have graduated from an accredited physical therapist assistant curriculum approved by the board; and

(c) have passed a written or computerized examination prescribed by the board.

History: En. Sec. 2, Ch. 39, L. 1961; amd. Sec. 8, Ch. 168, L. 1971; amd. Sec. 242, Ch. 350, L. 1974; amd. Sec. 24, Ch. 101, L. 1977; R.C.M. 1947, 66-2502; amd. Sec. 12, Ch. 491, L. 1979; amd. Sec. 1, Ch. 456, L. 1981; amd. Sec. 6, Ch. 253, L. 1995; amd. Sec. 49, Ch. 429, L. 1995; amd. Sec. 17, Ch. 481, L. 1997.

37-11-304. Application for examination — fee. (1) A person who desires to be licensed as a physical therapist or a physical therapist assistant shall apply to the department in writing, on a form furnished by the department. The person shall:

(a) provide evidence under oath, satisfactory to the board, of having the qualifications preliminary to the examination required by 37-11-303; and

(b) pay to the department at the time of filing the application a fee established by the board by rule. The fee must be commensurate with the cost of the examination and its administration and must be deposited in the state special revenue fund for the use of the board, subject to 37-1-101(6).

(2) Anyone failing to pass the required examination on the first attempt is entitled to take a second examination and, if the second examination is failed, to take a third examination. A person who fails the third examination is required to successfully complete additional education as required by the board before retaking the examination.

History: En. Sec. 3, Ch. 39, L. 1961; amd. Sec. 133, Ch. 147, L. 1963; amd. Sec. 1, Ch. 227, L. 1974; amd. Sec. 243, Ch. 350, L. 1974; R.C.M. 1947, 66-2503; amd. Sec. 1, Ch. 277, L. 1983; amd. Sec. 2, Ch. 115, L. 1991; amd. Sec. 7, Ch. 253, L. 1995; amd. Sec. 50, Ch. 429, L. 1995.

37-11-305. Examination — scope. The department shall, subject to 37-1-101, examine applicants for licenses as physical therapists and physical therapist assistants, at times and places the board determines. The examinations must embrace subjects the board considers necessary to determine the applicant's fitness.

History: En. Sec. 6, Ch. 39, L. 1961; amd. Sec. 245, Ch. 350, L. 1974; R.C.M. 1947, 66-2506; amd. Sec. 8, Ch. 253, L. 1995.

37-11-306. Issuance of license — certificate as evidence. The department shall issue a license to each applicant who proves to the satisfaction of the board the applicant's fitness for a physical therapist or physical therapist assistant license under this chapter. The department shall also issue to each licensed person a license certificate, which is prima facie evidence of that person's right to practice and advertise as a licensed physical therapist or a physical therapist assistant, subject to the conditions and limitations of this chapter.

History: En. Sec. 7, Ch. 39, L. 1961; amd. Sec. 246, Ch. 350, L. 1974; R.C.M. 1947, 66-2507; amd. Sec. 9, Ch. 253, L. 1995.

37-11-307. Applicants licensed in other states. The board may, in its discretion, authorize the department to issue a physical therapist or physical therapist assistant license, without examination, on the payment of the required fee established by the board, to an applicant who is a physical therapist or physical therapist assistant licensed under the laws of another state or territory if the applicant has met the same requirements as applicants licensed by examination under this chapter. An applicant licensed in another state or territory by examination other than the examination recognized under this chapter may be considered for licensure by the board if the requirements for a physical therapy license or a physical therapist assistant license in the state or territory in which the applicant was tested were at least equal to those requirements in force in this state at that time. However, the board may require a written, oral, or practical examination and may require continued study or refresher courses.

History: En. Sec. 5, Ch. 39, L. 1961; amd. Sec. 2, Ch. 227, L. 1974; amd. Sec. 244, Ch. 350, L. 1974; R.C.M. 1947, 66-2505; amd. Sec. 13, Ch. 491, L. 1979; amd. Sec. 25, Ch. 345, L. 1981; amd. Sec. 1, Ch. 454, L. 1983; amd. Sec. 10, Ch. 253, L. 1995.

37-11-308. Renewal of license — fee. A licensed physical therapist and a licensed physical therapist assistant shall, on or before the date set by department rule, apply to the department for a license renewal and pay a fee set by board rule. A license that is not renewed before the renewal date automatically lapses. The board may, in its discretion, revive and renew a lapsed license on the payment of all past unpaid renewal fees or a late renewal fee.

History: En. Sec. 8, Ch. 39, L. 1961; amd. Sec. 1, Ch. 353, L. 1969; amd. Sec. 247, Ch. 350, L. 1974; R.C.M. 1947, 66-2508; amd. Sec. 14, Ch. 491, L. 1979; amd. Sec. 26, Ch. 345, L. 1981; amd. Sec. 11, Ch. 253, L. 1995; amd. Sec. 51, Ch. 429, L. 1995; amd. Sec. 18, Ch. 492, L. 1997.

37-11-309. Temporary license. (1) On payment to the department of a fee set by board rule and the submission of a written application on forms provided by the board, the department shall issue, without examination, a temporary license to practice physical therapy in this state for a period not to exceed 1 year to a person who meets the qualifications set forth in 37-11-303, on submission by the person of evidence satisfactory to the board that the person is in this state on a temporary basis to assist in a case of medical emergency or to engage in a special physical therapy project.

(2) The board may, upon receipt of an application for examination and upon receipt of a temporary license fee not to exceed $100, issue a temporary license to a person who has applied for a license under this chapter and who is, in the judgment of the board, eligible to take the examination provided for in 37-11-303. This applicant shall work under the onsite supervision of a licensed physical therapist. This temporary license is available to an applicant only with respect to the applicant's first application. The temporary license expires when the board makes a final determination on the applicant's examination scores.

(3) The board may require an oral interview of all persons applying for a temporary license.

(4) The board shall adopt necessary and reasonable rules governing the procedures for applying and issuing temporary licenses.

History: En. Sec. 10, Ch. 39, L. 1961; amd. Sec. 248, Ch. 350, L. 1974; R.C.M. 1947, 66-2510; amd. Sec. 15, Ch. 491, L. 1979; amd. Sec. 27, Ch. 345, L. 1981; amd. Sec. 2, Ch. 456, L. 1981; amd. Sec. 12, Ch. 253, L. 1995.

37-11-310. Foreign-trained applicants. The foreign-trained physical therapist applicant's transcripts will be evaluated by a board-approved agency which reviews credentials. Upon receipt of this evaluation the board shall determine whether the number of academic credits awarded meets equivalent educational standards for a physical therapist degree or certificate established by an American physical therapist association accredited school of physical therapy. If the applicant's professional education credit hours are approved by the board, the applicant is eligible for a temporary license prior to examination.

History: En. Sec. 16, Ch. 491, L. 1979; amd. Sec. 2, Ch. 454, L. 1983.

37-11-311. Display of license. Each licensee shall display his original license or an official duplicate issued by the department and a renewal certificate in a conspicuous place in the principal office where he practices physical therapy. A reproduction displayed in lieu of the above is not authorized unless the reproduction is signed and notarized by a notary public.

History: En. Sec. 18, Ch. 491, L. 1979.

37-11-312 through 37-11-319 reserved.

37-11-320. Duty to report violations — immunity from liability. (1) Notwithstanding any provision of state law regarding the confidentiality of health care information, a physical therapist or physical therapist assistant shall report to the board any information that appears to show that another physical therapist or physical therapist assistant is:

(a) mentally or physically unable to engage safely in the practice of physical therapy or practice as an assistant; or

(b) guilty of any act, omission, or condition that is grounds for disciplinary action under 37-11-321.

(2) There is no liability on the part of and no cause of action may arise against a physical therapist or a physical therapist assistant who in good faith provides information to the board as required by subsection (1).

History: En. Sec. 2, Ch. 55, L. 1987; amd. Sec. 13, Ch. 253, L. 1995.

Cross-References

Health care practitioners — nonliability for peer review, Title 37, ch. 2, part 2.

Pharmacists — nonliability for peer review, 37-7-1101.

37-11-321. Refusal to issue or renew license. The board, after due notice and hearing, may refuse to license any applicant and may refuse to renew, may suspend, may revoke, or may take lesser disciplinary action on the license of any licensed person who:

(1) is habitually intoxicated or is addicted to the use of narcotic drugs;

(2) has been convicted of violating any state or federal narcotic law, subject to chapter 1, part 2;

(3) is, in the judgment of the board, guilty of immoral or unprofessional conduct as defined by board rule;

(4) has been convicted of any crime involving moral turpitude, subject to chapter 1, part 2;

(5) is guilty, in the judgment of the board, of gross negligence in the practice of physical therapy or practice as an assistant;

(6) has obtained or attempted to obtain licensure by fraud or material misrepresentation;

(7) has been committed pursuant to 53-21-127 by a court of competent jurisdiction and has not been released from commitment and declared not to require further commitment;

(8) has treated or undertaken to treat ailments of human beings otherwise than by physical therapy;

(9) is guilty, in the judgment of the board, of conduct unbecoming a person licensed as a physical therapist or assistant or of conduct detrimental to the best interests of the public; or

(10) has practiced physical therapy or has practiced as an assistant beyond the scope and limitation of the person's training and education.

History: En. Sec. 9, Ch. 39, L. 1961; amd. Sec. 25, Ch. 101, L. 1977; R.C.M. 1947, 66-2509; amd. Sec. 17, Ch. 491, L. 1979; amd. Sec. 14, Ch. 253, L. 1995; amd. Sec. 9, Ch. 490, L. 1997.

37-11-322. Penalties. Any person who knowingly violates any provisions of this chapter shall be guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not less than $50 or more than $500 or by imprisonment in the county jail for a term of not less than 30 days or more than 6 months or by both such fine and imprisonment.

History: En. Sec. 16, Ch. 39, L. 1961; R.C.M. 1947, 66-2516.

Cross-References

Criminal responsibility and accountability of corporations, 45-2-311, 45-2-312.

CHAPTER 12

CHIROPRACTIC

Part 1 — General

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37-12-303. Repealed.
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37-12-322. Investigation of complaints.
37-12-323. Reconsideration of board action — fee for restoration of license.
37-12-324. Penalty for violation.

Chapter Cross-References

Montana Chiropractic Legal Panel Act, Title 27, ch. 12.

Professional service corporations, Title 35, ch. 4.

Reporting required by health care professionals, Title 37, ch. 2, part 3.

Duty of chiropractors to report child abuse, 41-3-201.

Duty of chiropractor to report violation of Montana Elder and Persons with Developmental Disabilities Abuse Prevention Act, 52-3-811.

Part 1
General

37-12-101. Definitions — practice of chiropractic. Unless the context requires otherwise, in this chapter, the following definitions apply:

(1) "Board" means the board of chiropractors provided for in 2-15-1847.

(2) "Department" means the department of commerce provided for in Title 2, chapter 15, part 18.

(3) "Chiropractic" is the system of specific adjustment or manipulation of the articulations and tissues of the body, particularly of the spinal column, for the correction of nerve interference and includes the use of recognized diagnostic and treatment methods as taught in chiropractic colleges but does not include surgery or the prescription or use of drugs.

History: (1)En. 66-501.1 by Sec. 46, Ch. 350, L. 1974; Sec. 66-501.1, R.C.M. 1947; (2)En. initiative measure, Nov. 1918; effective under governor's proclamation, Dec. 28, 1918; re-en. Sec. 3144, R.C.M. 1921; re-en. Sec. 3144, R.C.M. 1935; amd. Sec. 1, Ch. 579, L. 1977; Sec. 66-507, R.C.M. 1947; R.C.M. 1947, 66-501.1, 66-507(1); amd. Sec. 3, Ch. 274, L. 1981.

37-12-102. Exemptions — limitations on construction of chapter. Nothing in this chapter shall be construed to restrain or restrict any legally licensed physician or surgeon or any legally licensed osteopath in the practice of his profession. The practice of chiropractic as herein defined is hereby declared not to be the practice of medicine or surgery within the meaning of the laws of the state of Montana defining the same and is further declared not to be the practice of osteopathy within the meaning of the laws of the state of Montana defining the same. Duly licensed chiropractors shall not be subject to the provisions of chapter 5 of this title or liable to any prosecution thereunder.

History: En. initiative measure, Nov. 1918; effective under governor's proclamation, Dec. 28, 1918; re-en. Sec. 3154, R.C.M. 1921; re-en. Sec. 3154, R.C.M. 1935; R.C.M. 1947, 66-517.

Cross-References

Practice of medicine defined, 37-3-102.

Exemptions from physician's licensing requirements, 37-3-103.

Practice of osteopathy defined, 37-5-101.

37-12-103. Duties of chiropractic practitioners. Chiropractic practitioners shall observe and be subject to all state and municipal regulations relating to the control of contagious and infectious diseases, sign death and birth certificates, and as to any and all matters pertaining to public health, report to the proper health officers the same as other practitioners.

History: En. initiative measure, Nov. 1918; effective under governor's proclamation, Dec. 28, 1918; re-en. Sec. 3145, R.C.M. 1921; re-en. Sec. 3145, R.C.M. 1935; R.C.M. 1947, 66-508.

37-12-104. Rights and limitations governing practice. (1) Chiropractors licensed under this chapter shall have the right to practice that science defined as chiropractic under 37-12-101 in accordance with the method, thought, and practice of chiropractors, and they shall be permitted to use the prefix "Dr." or "Doctor" as a title but shall not in any way imply that they are medical doctors, osteopaths, or surgeons. They shall not prescribe for or administer to any person any medicine or drugs or practice medicine or surgery or osteopathy, except that the use of antiseptics for purposes of sanitation and hygiene and to prevent infection and contagion shall be permitted.

(2) Licensed chiropractors may diagnose, palpate, and treat the human body by the application of manipulative, manual, mechanical, and dietetic methods, including chiropractic physiotherapy, the use of supportive appliances, analytical instruments, and diagnostic x-ray in accordance with guidelines promulgated or approved by state or federal health regulatory agencies.

History: (1)En. initiative measure, Nov. 1918; effective under governor's proclamation, Dec. 28, 1918; re-en. Sec. 3146, R.C.M. 1921; re-en. Sec. 3146, R.C.M. 1935; Sec. 66-509, R.C.M. 1947; (2)En. initiative measure, Nov. 1918; effective under governor's proclamation, Dec. 28, 1918; re-en. Sec. 3144, R.C.M. 1921; re-en. Sec. 3144, R.C.M. 1935; amd. Sec. 1, Ch. 579, L. 1977; Sec. 66-507, R.C.M. 1947; R.C.M. 1947, 66-507(2), 66-509; amd. Sec. 1, Ch. 203, L. 1989.

Part 2

Board of Chiropractors

Part Cross-References

Right to know, Art. II, sec. 9, Mont. Const.

Oath defined, 1-1-201.

Open meetings, Title 2, ch. 3, part 2.

Power of agencies to issue subpoenas, 2-4-104.

Adoption and publication of rules, Title 2, ch. 4, part 3.

Public records, Title 2, ch. 6.

Allocation of boards for administrative purposes, 2-15-121.

Quasi-judicial boards, 2-15-124.

Board established, 2-15-1847.

Subpoenas, Rule 45, M.R.Civ.P. (see Title 25, ch. 20); Title 26, ch. 2, part 1.

Affidavits, Title 26, ch. 1, part 10.

Arrest of witness for disobedience of subpoena, 26-2-106, 26-2-107.

Duties of Department, Director, and boards, Title 37, ch. 1, part 1.

Perjury and other falsification in official matters, Title 45, ch. 7, part 2.

Disrupting meeting as disorderly conduct, 45-8-101.

37-12-201. Organization of board — meetings — powers and duties. (1) The board shall elect annually a president, vice president, and secretary-treasurer from its membership.

(2) The board shall hold a regular meeting each year at Helena and shall hold special meetings at times and places as a majority of the board designates. A majority of the board constitutes a quorum.

(3) The board shall:

(a) administer oaths, take affidavits, summon witnesses, and take testimony as to matters coming within the scope of the board;

(b) adopt a seal that must be affixed to licenses issued;

(c) make a schedule of minimum educational requirements, which are without prejudice, partiality, or discrimination, as to the different schools of chiropractic;

(d) adopt rules necessary for the implementation, administration, continuation, and enforcement of this chapter. The rules must address but are not limited to license applications, form and display of license, license examination format, criteria for and grading of examinations, disciplinary standards for licensees, and the registration of interns and preceptors.

(e) make determinations of the qualifications of applicants under this chapter;

(f) administer the examination for licensure under this chapter;

(g) establish and collect fees, fines, and charges as provided in this chapter;

(h) issue, suspend, or revoke licenses under the conditions prescribed in this chapter; and

(i) certify that a chiropractor who meets the standards that the board by rule adopts is a qualified evaluator for purposes of 39-71-711.

(4) The department shall keep a record of the proceedings of the board, which must at all times be open to public inspection.

History: En. initiative measure, Nov. 1918; effective under governor's proclamation, Dec. 28, 1918; re-en. Sec. 3140, R.C.M. 1921; re-en. Sec. 3140, R.C.M. 1935; amd. Sec. 47, Ch. 350, L. 1974; amd. Sec. 1, Ch. 432, L. 1977; R.C.M. 1947, 66-503; amd. Sec. 1, Ch. 321, L. 1987; amd. Sec. 1, Ch. 161, L. 1989; amd. Sec. 2, Ch. 203, L. 1989; amd. Sec. 1, Ch. 275, L. 1993; amd. Sec. 52, Ch. 429, L. 1995.

37-12-202. Compensation of members — expenses. The members of the board shall receive compensation and travel expenses as provided for in 37-1-133.

History: En. initiative measure, Nov. 1918; effective under governor's proclamation, Dec. 28, 1918; re-en. Sec. 3150, R.C.M. 1921; re-en. Sec. 3150, R.C.M. 1935; amd. Sec. 4, Ch. 188, L. 1961; amd. Sec. 142, Ch. 147, L. 1963; amd. Sec. 20, Ch. 93, L. 1969; amd. sec. 54, Ch. 350, L. 1974; amd. Sec. 26, Ch. 439, L. 1975; R.C.M. 1947, 66-513(3); amd. Sec. 17, Ch. 474, L. 1981.

Part 3
Licensing

Part Cross-References

Oath defined, 1-1-201.

Proof of execution, Title 1, ch. 5, part 3.

Power of notary to take acknowledgments, 1-5-416.

Oath, Title 1, ch. 6.

Licensing to follow contested case procedure, 2-4-631.

Suspension of license fees for persons in military service, 10-1-605.

Affidavits, Title 26, ch. 1, part 10.

Reporting disciplinary actions against licensees, 37-1-105.

Duty of Board to adopt and enforce licensing and certification rules, 37-1-131.

Licensing boards to establish fees commensurate with costs, 37-1-134.

Licensing investigation and review — record access, 37-1-135.

Grounds for disciplinary action as grounds for license denial — conditions to new licenses, 37-1-137.

Licensure of criminal offenders, Title 37, ch. 1, part 2.

Perjury, 45-7-201.

False swearing, 45-7-202.

Nondiscrimination in licensing, 49-3-204.

37-12-301. Unlawful to practice without license. It is unlawful for a person to practice chiropractic in this state without first obtaining a license under this chapter.

History: En. initiative measure, Nov. 1918; effective under governor's proclamation, Dec. 28, 1918; re-en. Sec. 3141, R.C.M. 1921; re-en. Sec. 3141, R.C.M. 1935; amd. Sec. 48, Ch. 350, L. 1974; amd. Sec. 2, Ch. 432, L. 1977; R.C.M. 1947, 66-504(1).

37-12-302. Applications — qualifications — fees. (1) A person wishing to practice chiropractic in this state shall make application to the department, on the form and in the manner prescribed by the board, at least 21 days prior to a meeting of the board. Each applicant must be a graduate of or expect to graduate within 90 days prior to the next licensing examination administered by the board from a college of chiropractic approved by the board, in which the applicant has attended a course of study of 4 school years of not less than 9 months each. The applicant shall present evidence showing proof of a bachelor's degree from an accredited college or university. Application must be made in writing, must be sworn to by an officer authorized to administer oaths, and must recite the history of applicant's educational qualifications, how long the applicant has studied chiropractic, of what school or college the applicant is a graduate, and the length of time the applicant has been engaged in practice. The application must be accompanied with copies of diplomas and certificates and satisfactory evidence of good character and reputation.

(2) The applicant shall pay to the department a license fee prescribed by the board. A fee must also be paid for a subsequent examination and application.

(3) A person who is licensed in another state or who previously graduated from or was enrolled in a chiropractic college accredited by the council on chiropractic education on or before October 1, 1995, is exempt from the bachelor's degree requirement.

History: En. initiative measure, Nov. 1918; effective under governor's proclamation, Dec. 28, 1918; amd. Sec. 1, Ch. 224, L. 1919; re-en. Sec. 3142, R.C.M. 1921; amd. Sec. 1, Ch. 129, L. 1933; re-en. Sec. 3142, R.C.M. 1935; amd. Sec. 1, Ch. 123, L. 1951; amd. Sec. 1, Ch. 178, L. 1955; amd. Sec. 1, Ch. 188, L. 1961; amd. Sec. 49, Ch. 350, L. 1974; amd. Sec. 3, Ch. 432, L. 1977; R.C.M. 1947, 66-505; amd. Sec. 28, Ch. 345, L. 1981; amd. Sec. 3, Ch. 203, L. 1989; amd. Sec. 1, Ch. 168, L. 1995.

37-12-303. Repealed. Sec. 128, Ch. 429, L. 1995.

History: En. initiative measure, Nov. 1918; effective under governor's proclamation, Dec. 28, 1918; re-en. Sec. 3141, R.C.M. 1921; re-en. Sec. 3141, R.C.M. 1935; amd. Sec. 48, Ch. 350, L. 1974; amd. Sec. 2, Ch. 432, L. 1977; R.C.M. 1947, 66-504(2).

37-12-304. Examinations — subjects. (1) Examinations for a license to practice chiropractic must be made by the department, subject to 37-1-101, according to the method considered by the board to be the most practicable and expeditious to test the applicant's qualifications. The application must be designated by a number instead of the applicant's name so that the identity will not be discovered or disclosed until after the examination papers are graded.

(2) Examinations must be administered on subjects taught in chiropractic colleges, on the provisions of this chapter, and on other provisions of the Montana Code Annotated pertaining to the practice of chiropractic. A license must be granted to applicants who correctly answer 75% of all questions asked, including x-ray questions. If an applicant fails to answer correctly 60% of the questions on any branch of the examination, the applicant is not entitled to a license.

(3) The board may accept the grades an applicant has received in the examinations given by the national board of chiropractic examiners and may authorize the department to issue a license without further examination to an applicant who holds a valid certificate from the national board of chiropractic examiners if the applicant meets the other requirements of this chapter. The board may require an applicant to satisfactorily pass a clinical proficiency examination before being issued a license, even though the applicant holds a valid certificate from the national board of chiropractic examiners.

History: En. initiative measure, Nov. 1918; effective under governor's proclamation, Dec. 28, 1918; re-en. Sec. 3143, R.C.M. 1921; re-en. Sec. 3143, R.C.M. 1935; amd. Sec. 1, Ch. 36, L. 1967; amd. Sec. 50, Ch. 350, L. 1974; amd. Sec. 4, Ch. 432, L. 1977; R.C.M. 1947, 66-506; amd. Sec. 1, Ch. 347, L. 1983; amd. Sec. 2, Ch. 275, L. 1993.

37-12-305. Repealed. Sec. 1, Ch. 265, L. 1999.

History: En. initiative measure, Nov. 1918; effective under governor's proclamation, Dec. 28, 1918; re-en. Sec. 3152, R.C.M. 1921; re-en. Sec. 3152, R.C.M. 1935; amd. Sec. 5, Ch. 188, L. 1961; R.C.M. 1947, 66-515; amd. Sec. 29, Ch. 345, L. 1981.

37-12-306. Repealed. Sec. 4, Ch. 66, L. 1981.

History: En. initiative measure, Nov. 1918; effective under governor's proclamation, Dec. 28, 1918; re-en. Sec. 3148, R.C.M. 1921; re-en. Sec. 3148, R.C.M. 1935; amd. Sec. 52, Ch. 350, L. 1974; R.C.M. 1947, 66-511.

37-12-307. Renewal of license — fees. A license expires on the date set by department rule and must be renewed by the department on payment of a renewal fee, as set by the board, and the presentation of evidence satisfactory to the board that the licensee qualifies for renewal. All applicants for renewal who have not paid the renewal fee on or before the renewal date shall pay an additional late fee prescribed by the board.

History: En. initiative measure, Nov. 1918; effective under governor's proclamation, Dec. 28, 1918; amd. Sec. 1, Ch. 90, L. 1921; re-en. Sec. 3149, R.C.M. 1921; amd. Sec. 2, Ch. 129, L. 1933; re-en. Sec. 3149, R.C.M. 1935; amd. Sec. 2, Ch. 123, L. 1951; amd. Sec. 3, Ch. 188, L. 1961; amd. Sec. 1, Ch. 8, L. 1965; amd. Sec. 53, Ch. 350, L. 1974; amd. Sec. 1, Ch. 516, L. 1977; R.C.M. 1947, 66-512(1); amd. Sec. 4, Ch. 155, L. 1981; amd. Sec. 30, Ch. 345, L. 1981; amd. Sec. 1, Ch. 344, L. 1983; amd. Sec. 2, Ch. 321, L. 1987; amd. Sec. 53, Ch. 429, L. 1995; amd. Sec. 19, Ch. 492, L. 1997.

37-12-308. Deposit of fees — accounting. (1) Fees collected by the department under this chapter shall be deposited in the state special revenue fund for the use of the board, subject to 37-1-101(6).

(2) The department shall keep an accurate account of funds received and vouchers issued by the department.

History: En. initiative measure, Nov. 1918; effective under governor's proclamation, Dec. 28, 1918; re-en. Sec. 3150, R.C.M. 1921; re-en. Sec. 3150, R.C.M. 1935; amd. Sec. 4, Ch. 188, L. 1961; amd. Sec. 142, Ch. 147, L. 1963; amd. Sec. 20, Ch. 93, L. 1969; amd. sec. 54, Ch. 350, L. 1974; amd. Sec. 26, Ch. 439, L. 1975; R.C.M. 1947, 66-513(1), (2); amd. Sec. 1, Ch. 277, L. 1983.

37-12-309. Municipal license fee prohibited. No license fee or license tax may be imposed upon doctors of chiropractic as a condition to the practice of their profession by a municipality or any other political subdivision of the state, including a local government with self-governing powers.

History: En. initiative measure, Nov. 1918; effective under governor's proclamation, Dec. 28, 1918; amd. Sec. 1, Ch. 90, L. 1921; re-en. Sec. 3149, R.C.M. 1921; amd. Sec. 2, Ch. 129, L. 1933; re-en. Sec. 3149, R.C.M. 1935; amd. Sec. 2, Ch. 123, L. 1951; amd. Sec. 3, Ch. 188, L. 1961; amd. Sec. 1, Ch. 8, L. 1965; amd. Sec. 53, Ch. 350, L. 1974; amd. Sec. 1, Ch. 516, L. 1977; R.C.M. 1947, 66-512(2); amd. Sec. 3, Ch. 321, L. 1987.

37-12-310 through 37-12-320 reserved.

37-12-321. Repealed. Sec. 128, Ch. 429, L. 1995.

History: En. 66-510.1 by Sec. 2, Ch. 516, L. 1977; R.C.M. 1947, 66-510.1; amd. Sec. 14, Ch. 619, L. 1993.

37-12-322. Investigation of complaints. (1) The department may make an investigation whenever it is brought to its attention that there is reason to suspect that a person licensed to practice chiropractic:

(a) has a mental or physical condition that renders the person unable to safely engage in the practice of chiropractic;

(b) has been declared incompetent or has been committed pursuant to 53-21-127 by a court of competent jurisdiction and has not later been declared competent or released from supervision;

(c) has procured the license through mistake;

(d) has been guilty of unprofessional conduct;

(e) has practiced chiropractic while the license was suspended or revoked;

(f) has while under probation violated its terms.

(2) The investigation must be for the purpose of determining the probability of the existence of these conditions or the commission of these offenses and may, upon order of the board, include requiring the person to submit to a physical or mental examination, or both, by a physician or physicians selected by the board if it appears to be in the best interests of the public that this evaluation be secured. The board may examine the hospital records and reports of the licensee as part of the examination, and copies of these must be released to the board on written request.

History: En. 66-510.2 by Sec. 3, Ch. 516, L. 1977; R.C.M. 1947, 66-510.2; amd. Sec. 4, Ch. 203, L. 1989; amd. Sec. 54, Ch. 429, L. 1995; amd. Sec. 10, Ch. 490, L. 1997.

37-12-323. Reconsideration of board action — fee for restoration of license. (1) At any time after refusal, suspension, or revocation of license or placement on probation or any other disciplinary action, the board may, on its own motion or on application, reconsider its prior action and reverse, rescind, or modify such action.

(2) A person whose license has been revoked and later restored shall pay a fee prescribed by the board for the restoration.

History: En. 66-510.3 by Sec. 4, Ch. 516, L. 1977; R.C.M. 1947, 66-510.3; amd. Sec. 31, Ch. 345, L. 1981.

37-12-324. Penalty for violation. Any person who shall practice or attempt to practice chiropractic or any person who shall buy, sell, or fraudulently obtain any diploma or license to practice chiropractic, whether recorded or not, or who shall use the title "chiropractor", "D.C.", "Ph.C.", or any word title to influence belief that he is engaged in the practice of chiropractic without first complying with the provisions of this chapter or any person who shall violate any of the provisions of this chapter shall be guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not less than $100 or more than $700 or by imprisonment in a county jail for not less than 30 days or more than 7 months or by both such fine and imprisonment. Prosecutions for the violation of this chapter shall be instituted in the district courts.

History: En. initiative measure, Nov. 1918; effective under governor's proclamation, Dec. 28, 1918; re-en. Sec. 3153, R.C.M. 1921; re-en. Sec. 3153, R.C.M. 1935; amd. Sec. 1, Ch. 74, L. 1943; R.C.M. 1947, 66-516.

CHAPTER 13

ACUPUNCTURE PRACTICE ACT

Part 1 — General

37-13-101. Citation of chapter.
37-13-102. Legislative finding and purpose.
37-13-103. Definitions.
37-13-104. Partial exemptions.

Part 2 — Board of Medical Examiners

37-13-201. Powers and duties.

Part 3 — Licensing

37-13-301. License required for practice.
37-13-302. Application for licensure — fee — qualifications.
37-13-303. Repealed.
37-13-304. Issuance of certificate of license — license fee.
37-13-305. Repealed.
37-13-306. Renewal — fee — military exemption.
37-13-307. Deposit of moneys received.
37-13-308 through 37-13-310 reserved.
37-13-311 through 37-13-314. Repealed.
37-13-315. Enjoining unlawful practice.
37-13-316. Penalty.

Part 1

General

37-13-101. Citation of chapter. This chapter shall be known and may be cited as the "Acupuncture Practice Act of 1974".

History: En. 66-3401 by Sec. 1, Ch. 317, L. 1974; R.C.M. 1947, 66-3401.

37-13-102. Legislative finding and purpose. The legislature finds and declares that the practice of acupuncture in Montana affects the public health, safety, and welfare and should therefore be subject to regulation and control in the public interest in order to protect the public from the unauthorized and unqualified practice of acupuncture and from unprofessional conduct by persons licensed to practice acupuncture.

History: En. 66-3402 by Sec. 2, Ch. 317, L. 1974; R.C.M. 1947, 66-3402.

37-13-103. Definitions. As used in this chapter, the following definitions apply:

(1) "Acupuncture" means the diagnosis, treatment, or correction of human conditions, ailments, diseases, injuries, or infirmities by means of mechanical, thermal, or electrical stimulation effected by the insertion of solid needles. The term includes the use of acupressure and the use of oriental food remedies and herbs.

(2) "Acupuncturist" means a natural person licensed by the board of medical examiners to practice acupuncture.

(3) "Board" means the Montana state board of medical examiners.

(4) "School of acupuncture" means a school in which acupuncture is taught that has been recognized and designated by the board of medical examiners.

History: En. 66-3403 by Sec. 3, Ch. 317, L. 1974; R.C.M. 1947, 66-3403; amd. Sec. 1, Ch. 340, L. 1995.

37-13-104. Partial exemptions. (1) (a) This chapter may not be construed to require doctors of medicine, osteopathy, chiropractic, dentistry, and podiatry who are licensed in Montana to take further examinations in anatomy, physiology, chemistry, dermatology, diagnosis, bacteriology, materia medica, or other subjects that are or may be required for licensure in their respective professions.

(b) A doctor of medicine, osteopathy, chiropractic, dentistry, or podiatry may not practice acupuncture in this state unless that doctor has completed a course and passed an examination in acupuncture as required by this chapter.

(2) Except as provided in 37-13-301 and with particular regard to the insertion of solid needles used to perform acupuncture, this chapter is not intended to limit, interfere with, or prevent a licensed health professional from practicing within the scope of the health professional's license.

(3) This chapter does not affect the practice of an occupation by an individual who does not represent to the public that the individual is licensed under this chapter.

History: En. 66-3415 by Sec. 15, Ch. 317, L. 1974; R.C.M. 1947, 66-3415; amd. Sec. 2, Ch. 340, L. 1995.

Part 2
Board of Medical Examiners

Part Cross-References

Oath defined, 1-1-201.

Seal defined, 1-4-201.

Proof of execution, Title 1, ch. 5, part 3.

Power of notary to take acknowledgments, 1-5-416.

Oaths, Title 1, ch. 6.

Power of agencies to issue subpoenas, 2-4-104.

Adoption and publication of rules, Title 2, ch. 4, part 3.

Allocation of boards for administrative purposes, 2-15-121.

Quasi-judicial boards, 2-15-124.

Board established, 2-15-1841.

Subpoenas, Rule 45, M.R.Civ.P. (see Title 25, ch. 20); Title 26, ch. 2, part 1.

Affidavits, Title 26, ch. 1, part 10.

Arrest of witness for disobedience of subpoena, 26-2-106, 26-2-107.

Duties of Department, Director, and boards, Title 37, ch. 1, part 1.

Perjury, 45-7-201.

False swearing, 45-7-202.

37-13-201. Powers and duties. In addition to all other powers and duties conferred and imposed upon the board by this chapter, the board shall have and exercise the following powers and duties:

(1) to promulgate, under the applicable provisions of the Montana Administrative Procedure Act, rules which it determines to be necessary to carry out the provisions of this chapter;

(2) to adopt a schedule of minimum educational requirements, not inconsistent with the provisions of this chapter;

(3) to prescribe forms for application for examination and license;

(4) to prepare and supervise examination of applicants for license to practice acupuncture;

(5) to obtain the services of professional examination agencies in lieu of its own preparation of the examinations;

(6) to issue, revoke, and suspend licenses as hereinafter provided;

(7) to hold hearings, issue subpoenas, administer oaths, and take testimony and proofs concerning all matters within its jurisdiction;

(8) to issue commissions to take depositions of witnesses who are sick or absent from the state; and

(9) to adopt a seal, which shall be affixed to all licenses issued by the board and other official papers.

History: **En. 66-3405 by Sec. 5, Ch. 317, L. 1974; R.C.M. 1947, 66-3405.**

Part 3
Licensing

Part Cross-References

Licensing to follow contested case procedure, 2-4-631.

Suspension of license fees for persons in military service, 10-1-605.

Standardized forms, 37-1-104.

Reporting disciplinary actions against licensees, 37-1-105.

Duty of Board to adopt and enforce licensing and certification rules, 37-1-131.

Licensing boards to establish fees commensurate with costs, 37-1-134.

Licensing investigation and review — record access, 37-1-135.

Grounds for disciplinary action as grounds for license denial — conditions to new licenses, 37-1-137.

Licensure of criminal offenders, Title 37, ch. 1, part 2.

Nondiscrimination in licensing, 49-3-204.

37-13-301. License required for practice. (1) A person may not engage in the practice of acupuncture in this state unless the person is licensed under the provisions of this chapter.

(2) A person may not purport to practice acupuncture or use the title "acupuncturist" or any similar title unless the person is licensed under the provisions of this chapter.

History: **En. 66-3404, by Sec. 4, Ch. 317, L. 1974; R.C.M. 1947, 66-3404; amd. Sec. 3, Ch. 340, L. 1995.**

37-13-302. Application for licensure — fee — qualifications. (1) Each person desiring to practice acupuncture in this state shall make application for licensure with the secretary of the board, upon the forms and in the manner prescribed by the board. A fee prescribed by the board shall accompany the application.

(2) A person making application shall furnish the board evidence that he is:

(a) at least 18 years of age;

(b) of good moral character, as determined by the board;

(c) a graduate of an approved school of acupuncture that is approved by the national accreditation commission for schools and colleges of acupuncture and oriental medicine and offers a course of at least 1,000 hours of entry-level training in recognized branches of acupuncture or an equivalent curriculum approved by the board; and

(d) has passed an examination prepared and administered by the board or an examination prepared and administered by the national commission for the certification of acupuncturists.

History: En. 66-3406 by Sec. 6, Ch. 317, L. 1974; R.C.M. 1947, 66-3406; amd. Sec. 4, Ch. 341, L. 1981; amd. Sec. 32, Ch. 345, L. 1981; amd. Sec. 1, Ch. 307, L. 1987; amd. Sec. 1, Ch. 327, L. 1989.

37-13-303. Repealed. Sec. 2, Ch. 307, L. 1987.

History: En. 66-3407 by Sec. 7, Ch. 317, L. 1974; R.C.M. 1947, 66-3407; amd. Sec. 33, Ch. 345, L. 1981.

37-13-304. Issuance of certificate of license — license fee. All applicants successfully passing the examination required by this chapter shall be registered as licensed acupuncturists in the board register and, upon the payment of a license fee prescribed by the board, shall be issued a certificate of license in such form as prescribed by the board. The certificate shall bear the official seal of the board.

History: En. 66-3408 by Sec. 8, Ch. 317, L. 1974; R.C.M. 1947, 66-3408; amd. Sec. 34, Ch. 345, L. 1981.

37-13-305. Repealed. Sec. 128, Ch. 429, L. 1995.

History: En. 66-3409 by Sec. 9, Ch. 317, L. 1974; R.C.M. 1947, 66-3409; amd. Sec. 35, Ch. 345, L. 1981.

37-13-306. Renewal — fee — military exemption. (1) The license to practice acupuncture must be renewed on a date set by the department, without examination and upon request of the licensee. The request for renewal must be on forms prescribed by the board and accompanied by a renewal fee prescribed by the board. The request and fee must be in the hands of the secretary of the board not later than the expiration date of the license.

(2) Immediately following the renewal date, the secretary shall notify all licensees from whom requests for renewal, accompanied by the renewal fee, have not been received that their licenses have expired and that they will be canceled and revoked upon the records of the board unless a request for renewal and reinstatement, accompanied by the renewal fee and an additional fee prescribed by the board, is in the hands of the secretary within 30 days of the renewal date.

(3) If the licensee fails to renew within 30 days following the renewal date, the secretary of the board shall cancel and revoke upon the board's records all licenses that have not been renewed or reinstated as provided by this chapter and shall notify the licensees whose licenses are revoked of the action.

(4) A licensee who allows the license to lapse by failing to renew or reinstate the license as provided in this section may subsequently reinstate the license upon good cause shown to the satisfaction of the board and upon payment of all renewal fees then accrued plus an additional fee prescribed by the board for each renewal period following the cancelling of the license.

(5) A person actively engaged in the military service of the United States and licensed to practice acupuncture as provided in this part is not required to pay the renewal fee or make application for renewal until the renewal date of the calendar period in which the person returns from military service to civilian or inactive status.

History: En. 66-3410 by Sec. 10, Ch. 317, L. 1974; R.C.M. 1947, 66-3410; amd. Sec. 36, Ch. 345, L. 1981; amd. Sec. 4, Ch. 540, L. 1991; amd. Sec. 55, Ch. 429, L. 1995; amd. Sec. 20, Ch. 492, L. 1997.

37-13-307. Deposit of moneys received. All moneys received under this chapter shall be deposited with the state treasurer and credited to an account to be designated by him. No money shall be paid out of the fund except upon vouchers drawn against the fund, signed and certified to by the secretary of the board. All funds so credited shall be available to the board for the payment of expenses incurred by it in the performance of its duties under this chapter.

History: En. 66-3413 by Sec. 13, Ch. 317, L. 1974; R.C.M. 1947, 66-3413.

37-13-308 through 37-13-310 reserved.

37-13-311 through 37-13-314. Repealed. Sec. 128, Ch. 429, L. 1995.

Compiler's Comments

Histories of Repealed Sections:

37-13-311. En. 66-3411 by Sec. 11, Ch. 317, L. 1974; amd. Sec. 30, Ch. 101, L. 1977; R.C.M. 1947, 66-3411(1).

37-13-312. En. 66-3411 by Sec. 11, Ch. 317, L. 1974; amd. Sec. 30, Ch. 101, L. 1977; R.C.M. 1947, 66-3411(part).

37-13-313. En. 66-3411 by Sec. 11, Ch. 317, L. 1974; amd. Sec. 30, Ch. 101, L. 1977; R.C.M. 1947, 66-3411(5).

37-13-314. (1)En. 66-3411 by Sec. 11, Ch. 317, L. 1974; amd. Sec. 30, Ch. 101, L. 1977; Sec. 66-3411, R.C.M. 1947; (2)En. 66-3412 by Sec. 12, Ch. 317, L. 1974; Sec. 66-3412, R.C.M. 1947; R.C.M. 1947, 66-3411(part), 66-3412.

37-13-315. Enjoining unlawful practice. The practice of acupuncture in any way other than as defined in this chapter may be enjoined by the district court on petition by the board. In any such proceeding, it shall not be necessary to show that any person is individually injured by the actions complained of. If the respondent is found to have so practiced, the court shall enjoin him from so practicing unless and until he has been duly licensed. Procedure in such cases shall be the same as in any other injunction suit. The remedy by injunction is in addition to criminal prosecution and punishment.

History: En. 66-3414 by Sec. 14, Ch. 317, L. 1974; R.C.M. 1947, 66-3414.

Cross-References

Issuance of injunctions on nonjudicial days, 3-1-302, 3-5-302.

Contempts, Title 3, ch. 1, part 5.

Injunctions, Rule 65, M.R.Civ.P. (see Title 25, ch. 20); Title 27, ch. 19.

Affidavits, Title 26, ch. 1, part 10.

Disciplinary authority of boards — injunctions, 37-1-136.

37-13-316. Penalty. A person who violates any of the provisions of this chapter or the rules of the Montana state board of medical examiners is guilty of a misdemeanor punishable by imprisonment in the county jail not exceeding 6 months or by a fine not exceeding $500, or both.

History: En. 66-3416 by Sec. 16, Ch. 317, L. 1974; R.C.M. 1947, 66-3416; amd. Sec. 71, Ch. 51, L. 1999.

Compiler's Comments

1999 Amendment: Chapter 51 near middle substituted reference to Montana state board of medical examiners for reference to state board of acupuncture; and made minor changes in style. Amendment effective March 15, 1999.

Cross-References

Prosecutorial duties of County Attorney, 7-4-2712.

Duties of County Attorney relating to state matters, 7-4-2716.

CHAPTER 14

RADIOLOGIC TECHNOLOGISTS

Part 1 — General

37-14-101. Purpose.
37-14-102. Definitions.

Part 2 — Board of Radiologic Technologists

37-14-201. Compensation of board members — meetings — quorum.
37-14-202. Rulemaking power.

Part 3 — Licensing

37-14-301. Limitation of license authority — exemptions.
37-14-302. Qualifications.
37-14-303. Examination — application fee.
37-14-304. Repealed.
37-14-305. Issuance of license or permit — fee.
37-14-306. Permits.
37-14-307. Duty to carry, display license or permit.
37-14-308. Issuance of other documents.
37-14-309. Replacement documents.
37-14-310. Renewal — fee — reissuance of license.
37-14-311. Deposit of fees.
37-14-312. Repealed.
37-14-313 through 37-14-320 reserved.
37-14-321. Repealed.
37-14-322. Inspections.
37-14-323. Penalty for violation.

Chapter Cross-References

Nuclear regulation, Title 50, ch. 79.

Part 1
General

37-14-101. Purpose. The legislature declares that the practice of radiologic technology affects the public health, safety, and welfare and that it is therefore necessary to regulate and control such practice in the public interest. The purpose of this chapter is to protect the public from the unprofessional, improper, unauthorized, or unqualified practice of radiologic technology.

History: En. 66-3701.1 by Sec. 4, Ch. 310, L. 1977; R.C.M. 1947, 66-3701.1.

37-14-102. Definitions. In this chapter, unless the context clearly requires otherwise, the following definitions apply:

(1) "Board" means the board of radiologic technologists provided for in 2-15-1848.

(2) "Department" means the department of commerce.

(3) "License" means an authorization issued by the department to perform x-ray procedures on persons.

(4) "Licensed practitioner" means a person licensed or otherwise authorized by law to practice medicine, dentistry, denturitry, dental hygiene, podiatry, osteopathy, or chiropractic.

(5) "Limited permit technician" means a person who does not qualify for the issuance of a license under the provisions of this chapter but who has demonstrated, to the satisfaction of the board, the capability of performing specified high-quality x-ray procedures without endangering public health and safety.

(6) "Performance of x-ray procedures" means the involvement or completion of any portion of an x-ray procedure that may have an effect on the patient's accumulated x-ray radiation exposure, including positioning of the patient, technique selection, selection of ancillary equipment, initiation of exposure, and darkroom procedures.

(7) "Permit" means an authorization which may be granted by the board to perform x-ray procedures on persons when the applicant's qualifications do not meet standards required for the issuance of a license.

(8) "Radiologic technologist" means a person other than a licensed practitioner who has qualified under the provisions of this chapter for the issuance of a license to perform diagnostic x-ray procedures on persons and who performs the following functions in connection with the diagnostic procedure:

(a) operates x-ray equipment to reveal the internal condition of patients for the diagnosis of fractures, diseases, and other injuries;

(b) prepares and positions patients for x-ray procedures;

(c) selects the proper radiographic technique for visualization of specific internal structures of the human body;

(d) selects the proper ancillary equipment to be utilized in the x-ray procedure to enhance the visualization of the desired structure;

(e) prepares film processing solutions and develops or processes the exposed x-ray film; and

(f) inspects, maintains, and performs minor repairs to x-ray equipment.

History: En. 66-3701 by Sec. 1, Ch. 336, L. 1975; amd. Sec. 1, Ch. 310, L. 1977; R.C.M. 1947, 66-3701; amd. Sec. 3, Ch. 274, L. 1981; amd. Sec. 25, I.M. No. 97, approved Nov. 6, 1984; amd. Sec. 2, Ch. 166, L. 1985; amd. Sec. 46, Ch. 83, L. 1989.

Part 2

Board of Radiologic Technologists

Part Cross-References

Right to know, Art. II, sec. 9, Mont. Const.

Open meetings, Title 2, ch. 3, part 2.

Meeting defined, 2-3-202.

Adoption and publication of rules, Title 2, ch. 4, part 3.

Allocation of boards for administrative purposes, 2-15-121.

Quasi-judicial boards, 2-15-124.

Board established, 2-15-1848.

Duties of Department, Director, and boards, Title 37, ch. 1, part 1.

Disrupting meeting as disorderly conduct, 45-8-101.

37-14-201. Compensation of board members — meetings — quorum. (1) Board members shall receive compensation and travel expenses as provided for in 37-1-133.

(2) The board shall meet at least twice a year and elect a chairman at the first meeting of each calendar year.

(3) Four members of the board constitute a quorum for the purpose of transacting business.

History: En. 66-3703 by Sec. 4, Ch. 336, L. 1975; amd. Sec. 13, Ch. 453, L. 1977; R.C.M. 1947, 66-3703; amd. Sec. 18, Ch. 474, L. 1981.

37-14-202. Rulemaking power. The board may promulgate rules necessary to carry out the provisions of this chapter and adjudicate contested cases under it.

History: En. 66-3704 by Sec. 5, Ch. 336, L. 1975; R.C.M. 1947, 66-3704.

Part 3
Licensing

Part Cross-References

Licensing to follow contested case procedure, 2-4-631.

Suspension of license fees for persons in military service, 10-1-605.

Duty of Department to administer and grade examinations, 37-1-101.

Duty of Board to adopt and enforce licensing and certification rules, 37-1-131.

Licensing boards to establish fees commensurate with costs, 37-1-134.

Licensing investigation and review — record access, 37-1-135.

Grounds for disciplinary action as grounds for license denial — conditions to new licenses, 37-1-137.

Licensure of criminal offenders, Title 37, ch. 1, part 2.

Nondiscrimination in licensing, 49-3-204.

37-14-301. Limitation of license authority — exemptions. (1) No person may perform x-ray procedures on a person unless licensed or granted a limited permit under this chapter, with the following provisos:

(a) Licensure is not required for:

(i) a student enrolled in and attending a school or college of medicine, osteopathy, podiatry, dentistry, dental hygiene, chiropractic, or radiologic technology who applies x-ray radiation to persons under the specific direction of a person licensed to prescribe such examinations or treatment;

(ii) a person administering x-ray examinations related to the practice of dentistry or denturitry, provided such person is certified by the board of dentistry as having passed an examination testing his proficiency to administer x-ray examinations; or

(iii) a person who performs only darkroom procedures and is under the supervision of a licensed radiologic technologist or radiologist or is able to show evidence of completion of formal training in darkroom procedures as established by rule.

(b) Nothing in this chapter shall be construed to limit or affect in any respect the practice of their respective professions by duly licensed practitioners.

(2) A person licensed as a radiologic technologist may perform x-ray procedures on persons for medical, diagnostic, or therapeutic purposes under the specific direction of a person licensed to prescribe such procedures.

(3) A radiologic technologist licensed under this chapter may inject contrast media and radioactive isotopes (radio-nuclide material) intravenously upon request of a duly licensed practitioner. In the case of contrast media, the licensed practitioner requesting the procedure or the radiologist must be immediately available within the x-ray department. Such injections must be for diagnostic studies only and not for therapeutic purposes. The permitted injections include peripheral intravenous injections but specifically exclude intra-arterial or intracatheter injections. An uncertified radiologic technologist, a limited permit technician under 37-14-306, or an individual who is not licensed or authorized under another licensing act may not perform any of the activities listed in this subsection.

History: En. 66-3702 by Sec. 2, Ch. 336, L. 1975; R.C.M. 1947, 66-3702; amd. Sec. 1, Ch. 150, L. 1981; amd. Sec. 26, I.M. No. 97, approved Nov. 6, 1984; amd. Sec. 3, Ch. 166, L. 1985; amd. Sec. 17, Ch. 548, L. 1985; amd. Sec. 47, Ch. 83, L. 1989.

37-14-302. Qualifications. (1) Each applicant for licensure as a radiologic technologist shall have satisfactorily completed a 24-month course of study in radiologic technology approved by the board.

(2) Each applicant for licensure as a radiologic technologist shall:

(a) be of good moral character;

(b) be at least 18 years of age; and

(c) not be addicted to intemperate use of alcohol or narcotic drugs.

History: En. 66-3705 by Sec. 6, Ch. 336, L. 1975; amd. Sec. 2, Ch. 310, L. 1977; R.C.M. 1947, 66-3705; amd. Sec. 2, Ch. 296, L. 1981.

37-14-303. Examination — application fee. (1) Examinations for licensure as a radiologic technologist shall include a written portion and may also include practical and oral portions as established by the board.

(2) The board shall provide applicants for licensure the opportunity for examinations at intervals not to exceed 6 months.

(3) A nonrefundable examination fee, established by the board, shall be submitted prior to examination for licensure. An applicant failing the examination shall be charged a nonrefundable application fee for any subsequent examination. An applicant failing any subsequent examination is not eligible for reexamination until 12 months following the last failed examination.

History: En. 66-3706 by Sec. 7, Ch. 336, L. 1975; amd. Sec. 3, Ch. 310, L. 1977; R.C.M. 1947, 66-3706(1) thru (3); amd. Sec. 37, Ch. 345, L. 1981.

37-14-304. Repealed. Sec. 128, Ch. 429, L. 1995.

History: En. 66-3706 by Sec. 7, Ch. 336, L. 1975; amd. Sec. 3, Ch. 310, L. 1977; R.C.M. 1947, 66-3706(4).

37-14-305. Issuance of license or permit — fee. The board shall issue a license or permit to each applicant who has submitted a nonrefundable licensing fee set by the board and has met the requirements of this chapter.

History: En. 66-3707 by Sec. 8, Ch. 336, L. 1975; amd. Sec. 5, Ch. 310, L. 1977; R.C.M. 1947, 66-3707(part); amd. Sec. 38, Ch. 345, L. 1981.

37-14-306. Permits. (1) The board may issue a permit to an applicant not qualifying for the issuance of a license under the provisions of this chapter but who has demonstrated, to the satisfaction of the board, the capability of performing high-quality x-ray procedures without endangering public health and safety. An applicant must be required to demonstrate this capability by completion of formal classroom training that meets the standards established by rule and by means of examination. Permits issued under provisions of this section and 37-14-305 shall specify x-ray procedures, defined and established by rule, that may be performed by the holder. Permits shall be valid for a period not to exceed 12 months but may be renewed under the provisions established by rule.

(2) Examinations for the issuance of a permit must include a written portion and may also include practical and oral portions as established by the board. The board shall provide applicants for permits the opportunity for examination at intervals not to exceed 6 months. A nonrefundable examination fee, established by the board, must be submitted prior to examination for a permit. An applicant failing the examination must be charged a nonrefundable examination fee for any subsequent examination. An applicant failing any

subsequent examination shall meet any additional eligibility requirements established by rule for reexamination.

(3) Applicants meeting minimum requirements for licensure shall be issued a temporary permit to work as a radiologic technologist. This temporary permit shall expire 15 days after the date of first opportunity for examination.

(4) The board shall issue temporary permits to unlicensed persons to perform x-ray procedures when adequate evidence is provided the board that such a permit is necessary because of a regional hardship or emergency condition and that such person is capable of performing x-ray procedures without endangering public health and safety. Temporary permits may not exceed 12 months in duration but may be renewed by reestablishing, to the board's satisfaction, evidence of continued regional hardship or emergency conditions. The required adequate evidence of regional hardship, emergency conditions, and capability to perform x-ray procedures without endangering public health and safety must be established by rule.

(5) Each applicant for a permit must:

(a) be of good moral character;

(b) be at least 18 years of age; and

(c) not be addicted to intemperate use of alcohol or narcotic drugs.

History: En. 66-3707 by Sec. 8, Ch. 336, L. 1975; amd. Sec. 5, Ch. 310, L. 1977; R.C.M. 1947, 66-3707(2) thru (4); amd. Sec. 4, Ch. 166, L. 1985.

37-14-307. Duty to carry, display license or permit. Each radiologic technologist or limited permit technician shall carry or display his license or permit while at work. The license or permit shall be displayed on request.

History: En. 66-3707 by Sec. 8, Ch. 336, L. 1975; amd. Sec. 5, Ch. 310, L. 1977; R.C.M. 1947, 66-3707(5); amd. Sec. 5, Ch. 166, L. 1985.

37-14-308. Issuance of other documents. The board may issue to licensees or permittees such other cards, certificates, or documents as it considers necessary or convenient to the proper administration of this chapter.

History: En. 66-3707 by Sec. 8, Ch. 336, L. 1975; amd. Sec. 5, Ch. 310, L. 1977; R.C.M. 1947, 66-3707(6).

37-14-309. Replacement documents. The board may charge a reasonable fee for the replacement or duplication of a certificate, license, permit, or other document issued pursuant to this chapter.

History: En. 66-3709.1 by Sec. 9, Ch. 310, L. 1977; R.C.M. 1947, 66-3709.1.

37-14-310. Renewal — fee — reissuance of license. (1) Licenses expire on the date established by rule of the department.

(2) A license must be renewed by the board upon payment of a license fee set by the board and submission of a renewal application containing information that the board considers necessary to show that the applicant for renewal is a radiologic technologist in good standing.

(3) A radiologic technologist who has been licensed in Montana and whose license has not been revoked or suspended and who has temporarily ceased activities as a radiologic technologist for not more than 5 years may apply for reissuance of a license upon complying with the provisions of this section, including payment of an application fee.

History: En. 66-3709 by Sec. 10, Ch. 336, L. 1975; amd. Sec. 8, Ch. 310, L. 1977; R.C.M. 1947, 66-3709; amd. Sec. 5, Ch. 390, L. 1983; amd. Sec. 6, Ch. 166, L. 1985; amd. Sec. 21, Ch. 492, L. 1997.

37-14-311. Deposit of fees. Fees collected by the department shall be deposited in the state special revenue fund for the use of the board in administering this chapter.

History: En. 66-3707 by Sec. 8, Ch. 336, L. 1975; amd. Sec. 5, Ch. 310, L. 1977; R.C.M. 1947, 66-3707(part); amd. Sec. 1, Ch. 277, L. 1983.

37-14-312. Repealed. Sec. 3, Ch. 296, L. 1981.

History: En. 66-3708.1 by Sec. 7, Ch. 310, L. 1977; amd. Sec. 1, Ch. 573, L. 1977; R.C.M. 1947, 66-3708.1(1)(b).

37-14-313 through 37-14-320 reserved.

37-14-321. Repealed. Sec. 128, Ch. 429, L. 1995.

History: En. 66-3710 by Sec. 11, Ch. 336, L. 1975; R.C.M. 1947, 66-3710; amd. Sec. 7, Ch. 166, L. 1985; amd. Sec. 15, Ch. 619, L. 1993.

37-14-322. Inspections. Inspections for compliance with the provisions of this chapter may be performed by:

(1) the board of radiologic technologists;
(2) the department of commerce;
(3) the department of public health and human services.

History: En. 66-3711 by Sec. 12, Ch. 336, L. 1975; R.C.M. 1947, 66-3711; amd. Sec. 3, Ch. 274, L. 1981; amd. Sec. 61, Ch. 418, L. 1995; amd. Sec. 90, Ch. 546, L. 1995.

37-14-323. Penalty for violation. A person or the employer of a person who violates any provisions of this chapter or rules adopted under this chapter is guilty of an offense and shall be fined not to exceed $500. Each day of violation constitutes a separate offense.

History: En. 66-3712 by Sec. 13, Ch. 336, L. 1975; R.C.M. 1947, 66-3712.

Cross-References

Prosecutorial duties of County Attorney, 7-4-2712.

Duties of County Attorney relating to state matters, 7-4-2716.

Criminal responsibility of corporations, 45-2-311.

CHAPTER 15

SPEECH-LANGUAGE PATHOLOGISTS AND AUDIOLOGISTS

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Chapter Cross-References

Contracts by school districts for audiological services, 20-7-403(13).

Speech-language pathologist-client and audiologist-client privilege, 26-1-806.

Audiologist exempt from training period as hearing aid dispenser, 37-16-405.

Part 1
General

37-15-101. Purpose. The legislature declares it to be a policy of this state that in order to safeguard the public health, safety, and welfare and to protect the public from being misled by incompetent, unscrupulous, and unauthorized persons and to protect the public from unprofessional conduct by qualified speech-language pathologists and audiologists and to help ensure the availability of the highest possible quality speech-language pathology and audiology services to the people of this state with communicative disabilities, it is necessary to provide regulatory authority over persons offering speech-language pathology or audiology services to the public.

History: En. 66-3901 by Sec. 1, Ch. 543, L. 1975; R.C.M. 1947, 66-3901; amd. Sec. 6, Ch. 413, L. 1989; amd. Sec. 26, Ch. 472, L. 1997.

37-15-102. Definitions. As used in this chapter, the following definitions apply:

(1) "ASHA" means the American speech-language-hearing association.

(2) "Association" means the Montana speech-language and hearing association.

(3) "Audiologist" means a person who practices audiology and who meets the qualifications set forth in this chapter. A person represents to the public that the person is an audiologist by incorporating in any title or description of services or functions that the person directly or indirectly performs the words "audiologist", "audiology", "audiometrist", "audiometry", "audiological", "audiometrics", "hearing clinician", "hearing clinic", "hearing therapist", "hearing therapy", "hearing center", "hearing aid audiologist", or any similar title or description of services.

(4) "Audiology aide" means any person meeting the minimum requirements established by the board of speech-language pathologists and audiologists who works directly under the supervision of a licensed audiologist.

(5) "Board" means the board of speech-language pathologists and audiologists provided for in 2-15-1849.

(6) "Department" means the department of commerce provided for in Title 2, chapter 15, part 18.

(7) "Practice of audiology" means rendering or offering to render a service in audiology to individuals or groups of individuals who have or are suspected of having hearing disorders. These services include:

(a) prevention, identification, measurement, testing, evaluation, prediction, consultation, habilitation, rehabilitation, instruction, and research;

(b) participating in hearing conservation and hearing aid and assistive listening device evaluation, prescription, preparation, dispensing, and orientation;

(c) fabricating ear molds;

(d) providing auditory training and speech reading;

(e) conducting tests of vestibular function;

(f) evaluating tinnitus;

(g) planning, directing, conducting, or supervising programs that render or offer to render a service in audiology; and

(h) speech or language screening, limited to a pass/fail determination.

(8) "Practice of speech-language pathology" means rendering or offering to render a service in speech-language pathology to individuals or groups of individuals who have or are suspected of having communication disorders. These services include:

(a) prevention, identification, measurement, testing, evaluation, prediction, consultation, habilitation, and rehabilitation;

(b) determining the need for augmentative communication systems and providing training in the use of these systems;

(c) planning, directing, conducting, or supervising programs that render or offer to render a service in speech-language pathology;

(d) nondiagnostic pure-tone air conduction, tympanometry, and acoustic reflex screening, limited to a pass/fail determination;

(e) aural rehabilitation, which includes services and procedures for facilitating adequate receptive and expressive communication in individuals with hearing impairment;

(f) oral motor rehabilitation, which includes services and procedures for evaluating and facilitating face, lip, and tongue mobility and control;

(g) cognitive retraining, which includes services and procedures for evaluating and facilitating memory, attention, reasoning, processing, judgment, and other related areas in individuals with language impairment resulting from head injury, stroke, or other insult; and

(h) dysphagia therapy, which includes services and procedures for evaluating and facilitating swallowing and feeding in those individuals with swallowing disorders.

(9) "Speech-language pathologist" means a person who practices speech-language pathology and who meets the qualifications set forth in this chapter. A person represents to the public that the person is a speech-language pathologist by incorporating in any title or description of services or functions that the person directly or indirectly performs the words "speech pathologist", "speech pathology", "speech correctionist", "speech corrections", "speech therapist", "speech therapy", "speech clinician", "speech clinic", "language pathologist", "language pathology", "voice therapist", "voice therapy", "voice pathologist", "voice pathology", "logopedist", "logopedics", "communicologist", "communicology", "aphasiologist", "aphasiology",

"phoniatrist", "language therapist", "language clinician", or any similar title or description of services or functions.

(10) "Speech-language pathology aide" means a person meeting the minimum requirements established by the board who works directly under the supervision of a licensed speech-language pathologist.

History: En. 66-3902 by Sec. 2, Ch. 543, L. 1975; R.C.M. 1947, 66-3902; amd. Sec. 11, Ch. 22, L. 1979; amd. Sec. 3, Ch. 274, L. 1981; amd. Sec. 2, Ch. 413, L. 1989; amd. Sec. 1, Ch. 93, L. 1993; amd. Sec. 56, Ch. 429, L. 1995.

37-15-103. *(Temporary)* **Exemptions.** (1) Nothing in this chapter prevents a person licensed in this state under any other law from engaging in the profession or business for which the person is licensed.

(2) (a) Nothing in this chapter restricts or prevents activities of a speech-language pathology or audiology nature or the use of the official title of the position for which they were employed on the part of a speech-language pathologist or audiologist employed by federal agencies.

(b) Nothing in this chapter restricts an elementary or high school district or a special education cooperative organized under the provisions of Title 20 from hiring on an annual basis a person to provide to students speech-language pathology-related services who does not meet the licensing requirements of this chapter if the elementary or high school district or the special education cooperative has:

(i) made an ongoing, good faith effort to recruit and hire appropriately and adequately trained personnel to provide services to students with disabilities and has not received an application that resulted in the offer and acceptance of employment from any licensed person in the course of attempting to fill a position requiring a licensed person;

(ii) hired the most qualified unlicensed applicant, who must have completed at least a 4-year program in speech-language pathology or communication disorders and who can show written proof of ongoing enrollment in a program of study that would meet the licensing requirements of this chapter within 3 years of the date of hire; and

(iii) contracted with a licensed person to provide the person hired consultation and training in the subjects and in the manner that the licensed person considers necessary or appropriate for not less than 20 hours within the first 6 months of the unlicensed person's period of service.

(c) For the purposes of subsection (2)(b), an ongoing, good faith effort to recruit and hire appropriately and adequately trained personnel is presumed to be met if the school district or special education cooperative has advertised its vacant position in a newspaper of general circulation in the county in which the district or cooperative is located at least once each week for 3 consecutive weeks and has also advertised the vacancy during that same period with the state job service, the Montana university system placement service, the American speech-language-hearing association employment placement service, and the Montana speech-language-hearing association employment placement service.

(d) A school district or special education cooperative hiring an unlicensed person under subsection (2)(b) shall readvertise the vacancy upon the completion of each school fiscal year and may continue to employ the unlicensed person only upon compliance with the requirements of subsection (2) each year.

The maximum length of time that an unlicensed individual may be employed in the state under subsection (2)(b) is 3 years from the date of initial hire.

(3) Those persons performing activities described in subsection (2) who are not licensed under this chapter must do so solely within the confines of or under the jurisdiction of the organization in which they are employed and may not offer speech-language pathology or audiology services to the public for compensation over and above the salary that they receive for performance of their official duties with organizations by which they are employed. However, without obtaining a license under this chapter, these persons may consult or disseminate their research findings and scientific information to other accredited academic institutions or governmental agencies. They also may offer lectures to the public for a fee without being licensed under this chapter.

(4) Nothing in this chapter restricts activities and services of a student in speech-language pathology or audiology from pursuing a course of study in speech-language pathology or audiology at an accredited or approved college or university or an approved clinical training facility. However, these activities and services must constitute a part of the student's supervised course of study, and a fee may not accrue directly or indirectly to the student. These persons must be designated by the title "speech-language pathology (or audiology) intern", "speech-language pathology (or audiology) trainee", or a title clearly indicating the training status appropriate to the person's level of training.

(5) Nothing in this chapter restricts a person from another state from offering speech-language pathology or audiology services in this state if these services are performed for no more than 5 days in any calendar year and if the services are performed in cooperation with a speech-language pathologist or audiologist licensed under this chapter. However, by securing a temporary license from the board subject to limitations that the board may impose, a person not a resident of this state who is not licensed under this chapter but who is licensed under the law of another state that has established licensure requirements at least equivalent to those established by this chapter or who is the holder of the ASHA certificate of clinical competency in speech-language pathology or audiology or its equivalent may offer speech-language pathology or audiology services in this state for no more than 30 days in any calendar year if the services are performed in cooperation with a speech-language pathologist or audiologist licensed under this chapter.

(6) Nothing in this chapter restricts any person holding a class A certificate issued by the conference of executives of American schools of the deaf from performing the functions for which the person's qualifies.

(7) Nothing in this chapter restricts any person who holds a certificate of registration in this state as a hearing aid dealer from performing those functions for which the person's qualifies and that are described in Title 37, chapter 16.

(8) Nothing in this chapter exempts an audiologist who sells, dispenses, or fits hearing aids from the licensing requirements or other provisions of Title 37, chapter 16. *(Terminates June 30, 2003—sec. 5, Ch. 367, L. 1999.)*

37-15-103. *(Effective July 1, 2003)* **Exemptions.** (1) Nothing in this chapter prevents a person licensed in this state under any other law from engaging in the profession or business for which he is licensed.

(2) Nothing in this chapter restricts or prevents activities of a speech-language pathology or audiology nature or the use of the official title of the position for which they were employed on the part of a speech-language pathologist or audiologist employed by federal agencies.

(3) Those persons performing activities described in subsection (2) of this section who are not licensed under this chapter must do so solely within the confines of or under the jurisdiction of the organization in which they are employed and may not offer speech-language pathology or audiology services to the public for compensation over and above the salary they receive for performance of their official duties with organizations by which they are employed. However, without obtaining a license under this chapter, these persons may consult or disseminate their research findings and scientific information to other accredited academic institutions or governmental agencies. They also may offer lectures to the public for a fee without being licensed under this chapter.

(4) Nothing in this chapter restricts activities and services of a student in speech-language pathology or audiology from pursuing a course of study in speech-language pathology or audiology at an accredited or approved college or university or an approved clinical training facility. However, these activities and services must constitute a part of his supervised course of study, and a fee may not accrue directly or indirectly to the student. These persons must be designated by the title "speech-language pathology (or audiology) intern", "speech-language pathology (or audiology) trainee", or a title clearly indicating the training status appropriate to his level of training.

(5) Nothing in this chapter restricts a person from another state from offering speech-language pathology or audiology services in this state if these services are performed for no more than 5 days in any calendar year and if the services are performed in cooperation with a speech-language pathologist or audiologist licensed under this chapter. However, by securing a temporary license from the board subject to limitations as the board may impose, a person not a resident of this state who is not licensed under this chapter but who is licensed under the law of another state that has established licensure requirements at least equivalent to those established by this chapter or who is the holder of the ASHA certificate of clinical competency in speech-language pathology or audiology or its equivalent may offer speech-language pathology or audiology services in this state for no more than 30 days in any calendar year if the services are performed in cooperation with a speech-language pathologist or audiologist licensed under this chapter.

(6) Nothing in this chapter restricts any person holding a class A certificate issued by the conference of executives of American schools of the deaf from performing the functions for which he qualifies.

(7) Nothing in this chapter restricts any person who holds a certificate of registration in this state as a hearing aid dealer from performing those functions for which he qualifies and that are described in Title 37, chapter 16.

(8) Nothing in this chapter exempts an audiologist who sells, dispenses, or fits hearing aids from the licensing requirements or other provisions of Title 37, chapter 16.

History: En. 66-3904 by Sec. 4, Ch. 543, L. 1975; R.C.M. 1947, 66-3904; amd. Sec. 3, Ch. 413, L. 1989; amd. Sec. 1, Ch. 367, L. 1999.

Compiler's Comments

1999 Amendment: Chapter 367 inserted (2)(b) providing that nothing in this chapter restricts a cooperative from hiring on an annual basis a person to provide speech-language pathology-related services who does not meet this chapter's licensing requirements if the cooperative has tried to hire appropriately trained personnel, has hired the most qualified unlicensed person and the person has completed at least a 4-year program in speech-language pathology or communication disorders and can prove ongoing study to meet licensing requirements within 3 years after being hired, and has contracted with a licensed person to provide the unlicensed hired person consultation and training; inserted (2)(c) stating when an ongoing, good faith effort to recruit and hire appropriately and adequately trained personnel is presumed to be met; inserted (2)(d) providing that a cooperative hiring an unlicensed person shall try to hire a licensed person each year and comply with subsection (2) each year and providing that an unlicensed person may be employed under subsection (2)(b) for no more than 3 years after the hiring date; and made minor changes in style. Amendment effective April 20, 1999, and terminates June 30, 2003.

Retroactive Applicability: Section 6, Ch. 367, L. 1999, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to January 1, 1998."

Cross-References

Recognition of out-of-state licenses during disaster or emergency, 10-3-204.

Regulation of hearing aid dispensers, Title 37, ch. 16.

Part 2

Board of Speech-Language Pathologists and Audiologists

Part Cross-References

Right to know, Art. II, sec. 9, Mont. Const.

Seal defined, 1-4-201.

Manner of making seal, 1-4-202.

Open meetings, Title 2, ch. 3, part 2.

Meeting defined, 2-3-202.

Adoption and publication of rules, Title 2, ch. 4, part 3.

Public records, Title 2, ch. 6.

Allocation of boards for administrative purposes, 2-15-121.

Quasi-judicial boards, 2-15-124.

Board established, 2-15-1849.

Duties of Department, Director, and boards, Title 37, ch. 1, part 1.

Biennial report to Governor and Legislature, 37-1-106.

Disrupting meeting as disorderly conduct, 45-8-101.

37-15-201. Meetings. (1) The board shall meet at least once a year at a place, day, and hour determined by the board. The board shall also meet at other times and places as the bylaws of the board may provide or by call of the chairman or a majority of the members of the board. A quorum of the board shall consist of the majority of its members, but in no instance may a meeting of three board members who are exclusively speech-language pathologists or exclusively audiologists be considered a quorum.

(2) All meetings of the board for the consideration of and action on matters coming before the board are open to the public except:

(a) matters involving the management of internal affairs of the board may be considered and acted upon by the board in executive meetings under rules prescribed by the board;

(b) sessions to prepare, approve, grade, or administer examinations;

(c) upon request of a person who has failed the licensing examinations and who is appearing to appeal the failure.

History: En. 66-3905 by Sec. 6, Ch. 543, L. 1975; amd. Sec. 14, Ch. 453, L. 1977; amd. Sec. 5, Ch. 531, L. 1977; R.C.M. 1947, 66-3905(1), (4); amd. Sec. 6, Ch. 413, L. 1989.

37-15-202. Powers and duties of board and department. (1) The board shall:

(a) administer, coordinate, and enforce the provisions of this chapter;

(b) evaluate the qualifications of each applicant for a license as issued under this chapter and supervise the examination of applicants;

(c) conduct hearings and keep records and minutes as the board considers necessary to an orderly dispatch of business;

(d) adopt rules, including but not limited to those governing ethical standards of practice under this chapter;

(e) make recommendations to the governor and other state officials regarding new and revised programs and legislation related to speech-language pathology or audiology which could be beneficial to the citizens of the state of Montana;

(f) cause the prosecution and enjoinder of all persons violating this chapter, by the complaints of its secretary filed with the county attorney in the county where the violation took place, and incur necessary expenses therefor;

(g) adopt a seal by which the board shall authenticate its proceedings.

(2) Copies of the proceedings, records, and acts of the board, signed by the presiding officer or secretary of the board and stamped with the seal, are prima facie evidence of the validity of the documents.

(3) The board may make rules which are reasonable or necessary for the proper performance of its duties and for the regulation of proceedings before it.

(4) The department may employ persons it considers necessary to carry out the provisions of this chapter.

(5) The department shall prepare a report to the governor as required by law.

History: En. 66-3905 by Sec. 6, Ch. 543, L. 1975; amd. Sec. 14, Ch. 453, L. 1977; amd. Sec. 5, Ch. 531, L. 1977; R.C.M. 1947, 66-3905(3), (5) thru (7); amd. Sec. 6, Ch. 413, L. 1989; amd. Sec. 57, Ch. 429, L. 1995.

37-15-203. Compensation and expenses. Each board member shall receive compensation and travel expenses as provided for in 37-1-133.

History: En. 66-3905 by Sec. 6, Ch. 543, L. 1975; amd. Sec. 14, Ch. 453, L. 1977; amd. Sec. 5, Ch. 531, L. 1977; R.C.M. 1947, 66-3905(2); amd. Sec. 19, Ch. 474, L. 1981.

Part 3
Licensing

Part Cross-References

Right to know, Art. II, sec. 9, Mont. Const.

Licensing to follow contested case procedure, 2-4-631.

Public records, Title 2, ch. 6.

Suspension of license fees for persons in military service, 10-1-605.

Duties of Department — standardized forms, 37-1-101.

Duty of Board to adopt and enforce licensing and certification rules, 37-1-131.

Licensing boards to establish fees commensurate with costs, 37-1-134.

Licensing investigation and review — record access, 37-1-135.

Grounds for disciplinary action as grounds for license denial — conditions to new licenses, 37-1-137.

Licensure of criminal offenders, Title 37, ch. 1, part 2.

Nondiscrimination in licensing, 49-3-204.

37-15-301. *(Temporary)* **License required.** (1) A license must be issued to qualified persons either in speech-language pathology or audiology. A person may be licensed in both areas if the person meets the respective qualifications, and in these instances, the license fee must be as though for one license.

(2) Except as provided in 37-15-103, a person may not practice or purport to be a speech-language pathologist or audiologist in this state unless the person is licensed in accordance with the provisions of this chapter. *(Terminates June 30, 2003—sec. 5, Ch. 367, L. 1999.)*

37-15-301. *(Effective July 1, 2003)* **License required.** (1) A license shall be issued to qualified persons either in speech-language pathology or audiology. A person may be licensed in both areas if he meets the respective qualifications, and in such instances the license fee shall be as though for one license.

(2) No person may practice or represent himself as a speech-language pathologist or audiologist in this state unless he is licensed in accordance with the provisions of this chapter.

History: En. 66-3903 by Sec. 3, Ch. 543, L. 1975; R.C.M. 1947, 66-3903; amd. Sec. 6, Ch. 413, L. 1989; amd. Sec. 2, Ch. 367, L. 1999.

Compiler's Comments

1999 Amendment: Chapter 367 in (2) inserted exception clause; and made minor changes in style. Amendment effective April 20, 1999, and terminates June 30, 2003.

Retroactive Applicability: Section 6, Ch. 367, L. 1999, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to January 1, 1998."

37-15-302. Application forms. Application for examination for licensing a speech-language pathologist or audiologist shall be made upon forms prescribed by the board.

History: En. 66-3908 by Sec. 9, Ch. 543, L. 1975; R.C.M. 1947, 66-3908(1); amd. Sec. 6, Ch. 413, L. 1989.

37-15-303. Qualifications. (1) To be eligible for licensing by the board as a speech-language pathologist or audiologist, the applicant must:

(a) meet the current academic, supervised clinical practicum, and postclassroom sponsored employment requirements of the ASHA;

(b) pass an examination approved by the board.

(2) The board shall determine the subject and scope of the examination.

History: En. 66-3906 by Sec. 7, Ch. 543, L. 1975; amd. Sec. 34, Ch. 101, L. 1977; R.C.M. 1947, 66-3906(part); amd. Sec. 6, Ch. 413, L. 1989.

37-15-304. Examination. (1) Except as otherwise provided in this chapter, an applicant shall be examined for speech-language pathology or audiology by the board and shall pay to the board, at least 30 days prior to the date of the examination, the examination fee for each examination as prescribed by this chapter.

(2) The board shall examine by written examination given at least twice a year at a time and place and under such supervision as the board may determine. In addition, an oral examination may be required by the board. Standards for acceptable performance shall be determined by the board.

(3) The board may waive the written examination for certification if the applicant has successfully passed the national examination in speech-language pathology or audiology.

(4) The board may examine or direct the applicant to be examined for knowledge in whatever theoretical or applied fields of speech-language pathology or audiology as it considers appropriate. It may also examine the

candidate with regard to his professional skills and his judgment in the utilization of speech-language pathology or audiology techniques and methods.

(5) The department shall maintain a permanent record of all examination scores.

(6) The board shall keep an accurate transcript of the oral examination, if any. Transcripts of oral examinations shall be retained by the board for at least 1 year following the date of examination.

(7) An applicant who fails his examination may be reexamined at a subsequent examination upon payment of another examination fee. An applicant who fails two successive examinations may apply for reexamination after 2 years of additional professional experience or training.

History: (1) thru (6)En. 66-3909 by Sec. 10, Ch. 543, L. 1975; Sec. 66-3909, R.C.M. 1947; (7)En. 66-3906 by Sec. 7, Ch. 543, L. 1975; amd. Sec. 34, Ch. 101, L. 1977; Sec. 66-3906, R.C.M. 1947; R.C.M. 1947, 66-3906(part), 66-3909(1) thru (6); amd. Sec. 6, Ch. 413, L. 1989.

37-15-305. Repealed. Sec. 128, Ch. 429, L. 1995.

History: En. 66-3908, 66-3909 by Secs. 9, 10, Ch. 543, L. 1975; R.C.M. 1947, 66-3908(3), (6) thru (8), 66-3909(7); amd. Sec. 4, Ch. 413, L. 1989.

37-15-306. Issuance of license. (1) The board shall grant a license to each person who meets the requirements for licensure as prescribed in this chapter, and the department shall issue the license.

(2) The license shall include the dates of issuance and expiration and shall bear a serial number.

(3) The license shall be signed by the secretary of the board under the seal of the board.

History: En. 66-3907 by Sec. 8, Ch. 543, L. 1975; R.C.M. 1947, 66-3907(1) thru (3).

37-15-307. Application and examination fee — license fee — registration fee. The amount of fees prescribed in connection with a license as a speech-language pathologist or audiologist and with registration as a speech-language pathology aide or audiology aide shall be determined by the board each year based on costs and predicted expenditures.

History: En. 66-3910 by Sec. 11, Ch. 543, L. 1975; R.C.M. 1947, 66-3910(1); amd. Sec. 39, Ch. 345, L. 1981; amd. Sec. 1, Ch. 368, L. 1985; amd. Sec. 6, Ch. 413, L. 1989.

37-15-308. Renewal. (1) Each licensed speech-language pathologist or audiologist shall pay to the board the fee for the renewal of the license according to rules adopted by the department.

(2) The department shall notify each person licensed under this chapter relative to the date of expiration of the license and the amount of the renewal fee. This notice must be mailed to each licensed speech-language pathologist or audiologist at least 1 month before the expiration of the license.

(3) Renewal may be made at any time during the 60 days prior to the expiration date by application therefor.

(4) Failure on the part of any licensed person to pay the renewal fee by the expiration date does not deprive the person of the right to renew the license, but the fee must be increased 10% for each month that the payment of the renewal fee is delayed after the expiration date. The maximum fee for delayed renewal may not exceed twice the normal renewal fee.

(5) Application for renewal following a lapse of 1 year or more is subject to review by the board, and the applicant may be requested to complete an examination successfully if the board so determines.

(6) A suspended license is subject to expiration and may be renewed as provided in this section, but the renewal does not entitle the licensee, while the license remains suspended, to engage in the licensed activity or in any other activity or conduct which violates the order or judgment by which the license was suspended.

(7) A license revoked on disciplinary grounds is subject to expiration, and it may not be renewed. If it is reinstated after its expiration, the licensee, as a condition of reinstatement, shall pay a reinstatement fee in an amount equal to the renewal fee in effect on the last preceding regular renewal date before the date on which it is reinstated plus the delinquency fee, if any, accrued at the time of its revocation.

(8) A person who fails to renew a license within 2 years after its expiration may not renew it, and it may not be restored, reissued, or reinstated. However, the person may reapply for and obtain a new license if the person meets the requirements of this chapter.

History: En. 66-3907, 66-3910 by Secs. 8, 11, Ch. 543, L. 1975; R.C.M. 1947, 66-3907(4) thru (7), 66-3910(3) thru (7); amd. Sec. 2, Ch. 368, L. 1985; amd. Sec. 5, Ch. 413, L. 1989; amd. Sec. 58, Ch. 429, L. 1995.

37-15-309. Repealed. Sec. 128, Ch. 429, L. 1995.

History: En. 66-3907 by Sec. 8, Ch. 543, L. 1975; R.C.M. 1947, 66-3907(9).

37-15-310. Deposit of moneys received. All moneys received by the department shall be deposited in the state treasury to the credit of the state special revenue fund for the use of the board and subject to 37-1-101(6).

History: En. 66-3910 by Sec. 11, Ch. 543, L. 1975; R.C.M. 1947, 66-3910(2); amd. Sec. 1, Ch. 277, L. 1983.

37-15-311. Municipal tax prohibited. No license tax shall be imposed upon speech-language pathologists or audiologists by a municipality or any other subdivision of the state.

History: En. 66-3910 by Sec. 11, Ch. 543, L. 1975; R.C.M. 1947, 66-3910(8); amd. Sec. 6, Ch. 413, L. 1989.

37-15-312. Department to publish list of licensees and registrants. Each year the department shall publish a list of all persons licensed and registered under this chapter, containing their names and addresses and such other information as the board considers advisable. The department shall mail a copy of this list to each person licensed under this chapter, place a copy on file in the secretary of state's office, and furnish copies to the public upon request.

History: En. 66-3907 by Sec. 8, Ch. 543, L. 1975; R.C.M. 1947, 66-3907(8); amd. Sec. 3, Ch. 368, L. 1985.

Cross-References

Prohibition on distribution or sale of mailing lists, 2-6-109.

37-15-313. *(Temporary)* **Registration of aides — unlicensed persons in schools.** (1) Each licensed speech-language pathologist and audiologist shall annually, on or before October 31, register with the board on forms provided by the board all speech-language pathology aides and audiology aides working directly under the supervision of the licensee.

(2) The superintendent of an elementary or high school district or the chief administrative officer of a special education cooperative organized under Title 20 shall register with the board on forms provided by the board all unlicensed persons working as speech-language pathologists. *(Terminates June 30, 2003—sec. 5, Ch. 367, L. 1999.)*

37-15-313. *(Effective July 1, 2003)* **Registration of aides.** Each licensed speech-language pathologist and audiologist shall annually, on or before October 31, register with a board on forms provided by the board all speech-language pathology aides and audiology aides working directly under the supervision of the licensee.

History: En. Sec. 4, Ch. 368, L. 1985; amd. Sec. 6, Ch. 413, L. 1989; amd. Sec. 3, Ch. 367, L. 1999.

Compiler's Comments

1999 Amendment: Chapter 367 inserted (2) requiring the school superintendent or the chief administrative officer of a special education cooperative to register unlicensed persons with the board; and made minor changes in style. Amendment effective April 20, 1999, and terminates June 30, 2003.

Retroactive Applicability: Section 6, Ch. 367, L. 1999, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to January 1, 1998."

37-15-314 through 37-15-320 reserved.

37-15-321. Repealed. Sec. 128, Ch. 429, L. 1995.

History: En. 66-3911 by Sec. 12, Ch. 543, L. 1975; R.C.M. 1947, 66-3911.

37-15-322. Penalty. A person convicted of violating this chapter shall be fined not to exceed $500 or be imprisoned in the county jail for any term not to exceed 6 months, or both.

History: En. 66-3912 by Sec. 13, Ch. 543, L. 1975; R.C.M. 1947, 66-3912.

Cross-References

Prosecutorial duties of County Attorney, 7-4-2712.

Duties of County Attorney relating to state matters, 7-4-2716.

37-15-323. Injunction of unlawful practice. The practice of speech-language pathology or audiology in any way other than as defined in this chapter may be enjoined by the district court on petition by the board.

History: En. 66-3913 by Sec. 14, Ch. 543, L. 1975; R.C.M. 1947, 66-3913; amd. Sec. 6, Ch. 413, L. 1989.

Cross-References

Issuance of injunctions on nonjudicial days, 3-1-302, 3-5-302.

Contempts, Title 3, ch. 1, part 5.

Injunctions, Rule 65, M.R.Civ.P. (see Title 25, ch. 20); Title 27, ch. 19.

Affidavits, Title 26, ch. 1, part 10.

Disciplinary authority of boards — injunctions, 37-1-136.

CHAPTER 16

HEARING AID DISPENSERS

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37-16-414. Repealed.

Part 1
General

37-16-101. Declaration of policy. The selling, dispensing, and fitting of hearing aids is hereby declared to affect the public health and welfare and is subject to regulation and control in the public interest. This chapter shall be liberally construed to carry out the objectives and purposes hereinafter described in accordance with this declaration of policy.

History: En. Sec. 1, Ch. 204, L. 1969; R.C.M. 1947, 66-3001; amd. Sec. 1, Ch. 404, L. 1985.

37-16-102. Definitions. Unless the context requires otherwise, in this chapter, the following definitions apply:

(1) "Board" means the board of hearing aid dispensers provided for in 2-15-1850.

(2) "Department" means the department of commerce provided for in Title 2, chapter 15, part 18.

(3) "Hearing aid" means an instrument or device designed for or represented as aiding or improving defective human hearing and parts, attachments, or accessories of the instrument or device.

(4) "License" means a regular or trainee license.

(5) "Practice of selling, dispensing, and fitting hearing aids" means the evaluation or measurement of the powers or range of human hearing by means of an audiometer and a visual examination of the ear and canal or by any other means devised and the consequent selection, adaption, sale, dispensing, or

fitting of hearing aids intended to compensate for hearing loss, including eyeglass hearing aids and their fittings, and the making of an impression of the ear and the subsequent selection of a proper ear mold, but does not include batteries, cords, or accessories.

History: En. Sec. 3, Ch. 204, L. 1969; amd. Sec. 292, Ch. 350, L. 1974; R.C.M. 1947, 66-3003; amd. Sec. 3, Ch. 274, L. 1981; amd. Sec. 4, Ch. 444, L. 1981; amd. Sec. 2, Ch. 404, L. 1985.

37-16-103. Exemptions. (1) This chapter does not apply to a person who is a physician licensed to practice by the state board of medical examiners.

(2) This chapter does not apply to a person while he is engaged in the practice of fitting hearing aids if his practice is part of the academic curriculum of an accredited institution of higher education or part of a program conducted by a public agency.

History: En. Sec. 9, Ch. 204, L. 1969; amd. Sec. 297, Ch. 350, L. 1974; R.C.M. 1947, 66-3009; amd. Sec. 3, Ch. 404, L. 1985.

Part 2
Board of Hearing Aid Dispensers

Part Cross-References

Right to know, Art. II, sec. 9, Mont. Const.

Open meetings, Title 2, ch. 3, part 2.

Meeting defined, 2-3-202.

Adoption and publication of rules, Title 2, ch. 4, part 3.

Allocation of boards for administrative purposes, 2-15-121.

Quasi-judicial boards, 2-15-124.

Board established, 2-15-1850.

Duties of Department, Director, and boards, Title 37, ch. 1, part 1.

Duty of Department to administer and grade examinations, 37-1-101.

Disciplinary authority of boards — injunctions, 37-1-136.

Disrupting meeting as disorderly conduct, 45-8-101.

37-16-201. Meetings — quorum — organization. (1) The board shall meet at least once each year at a place and time determined by the chairman and at other times and places specified by the chairman to carry out this chapter. Three members constitute a quorum.

(2) Members of the board shall annually designate one member to serve as chairman and another member to serve as secretary-treasurer.

History: En. Sec. 6, Ch. 204, L. 1969; amd. Sec. 295, Ch. 350, L. 1974; R.C.M. 1947, 66-3006; amd. Sec. 5, Ch. 444, L. 1981.

37-16-202. Powers and duties. The powers and duties of the board are to:

(1) license persons who apply and are qualified to practice the fitting of hearing aids;

(2) establish a procedure to act as a grievance board to initiate or receive, investigate, and mediate complaints from any source concerning the activities of persons licensed under this chapter or their agents, whether licensed or not;

(3) suspend or revoke licenses under this chapter;

(4) designate the time and place for examining applicants for license and supervise and administer the examination;

(5) adopt rules necessary to carry out this chapter;

(6) require the periodic inspection and calibration of audiometric testing equipment and carry out periodic inspections of facilities of persons who practice or engage in the business of fitting or selling hearing aids;

(7) prepare examinations required by the chapter;

(8) initiate legal action to enjoin from operation a person engaged in the sale, dispensing, or fitting of hearing aids in this state that is not licensed under this chapter;

(9) adopt rules consistent with the provisions of 37-16-301, 37-16-303, 37-16-304, 37-16-402, 37-16-403, 37-16-405, 37-16-407, 37-16-408, and 37-16-411. Rules adopted by the board may include but are not limited to rules defining the term "related devices" and other rules necessary to implement 37-16-301, 37-16-303, 37-16-304, 37-16-402, 37-16-403, 37-16-405, 37-16-407, 37-16-408, and 37-16-411.

(10) establish and adopt minimum requirements for the form of bills of sale and receipts.

History: En. Sec. 5, Ch. 204, L. 1969; amd. Sec. 294, Ch. 350, L. 1974; R.C.M. 1947, 66-3005; amd. Sec. 6, Ch. 444, L. 1981; amd. Sec. 4, Ch. 404, L. 1985; (9)En. Sec. 11, Ch. 155, L. 1991; amd. Sec. 1, Ch. 72, L. 1995; amd. Sec. 18, Ch. 481, L. 1997.

37-16-203. Compensation of members — expenses. Each member of the board shall receive compensation and travel expenses as provided for in 37-1-133.

History: En. Sec. 20, Ch. 204, L. 1969; amd. Sec. 303, Ch. 350, L. 1974; amd. Sec. 44, Ch. 439, L. 1975; R.C.M. 1947, 66-3020(2); amd. Sec. 12, Ch. 22, L. 1979; amd. Sec. 20, Ch. 474, L. 1981.

Part 3

Regulatory Provisions

37-16-301. Permanent place of business in state necessary — records — notice — designation of licensee in charge. (1) A person who is actively engaged in dispensing hearing aids and related devices as a business must have a permanent place of business in this state that will be opened to serve the public, having the necessary testing, fitting, and hearing aid accessories needed by the hard-of-hearing public in the wearing of hearing aids and related devices. All licensed hearing aid dispensers shall identify their permanent place of business in all advertising public notices and in all consumer correspondence, both written and verbal. More than one hearing aid dispenser licensee may work from a permanent place of business.

(2) The department shall keep a record of the places of practice of persons who hold regular licenses or trainee licenses. A notice required to be given by the board or department to a person who holds a regular or trainee license may be given by mailing it to the person at the address last given to the department.

(3) All licensed hearing aid dispensers shall notify the board of any change of address within 30 days of the change. A trainee shall notify the board of any change of address within 10 days of the change.

(4) (a) When licensed hearing aid dispensers and trainees work at the same permanent place of business, the licensed hearing aid dispenser shall designate one licensed dispenser as the person in charge. There must be one licensed dispenser in charge at a permanent place of business.

(b) The licensed hearing aid dispenser in charge of a permanent place of business:

(i) is responsible and accountable under the disciplinary authority of the board for the conduct of trainees using that permanent place of business; and

(ii) has custody and control of the business records of that permanent place of business and is responsible for producing the records during an investigation conducted by the department.

History: En. Sec. 15, Ch. 204, L. 1969; amd. Sec. 300, Ch. 350, L. 1974; R.C.M. 1947, 66-3015; amd. Sec. 7, Ch. 444, L. 1981; amd. Sec. 5, Ch. 404, L. 1985; amd. Sec. 1, Ch. 155, L. 1991; amd. Sec. 60, Ch. 429, L. 1995.

Cross-References

Right to know, Art. II, sec. 9, Mont. Const.

Public records, Title 2, ch. 6.

Duties of Department, 37-1-101.

37-16-302. Sale of dispensing business. A business selling, dispensing, or fitting hearing aids may be sold provided the new owners comply with all the provisions of this chapter.

History: En. Sec. 18, Ch. 204, L. 1969; R.C.M. 1947, 66-3018; amd. Sec. 6, Ch. 404, L. 1985.

37-16-303. Bill of sale — medical evaluation requirements — waiver. (1) Any person who practices the selling, fitting, or dispensing of hearing aids and related devices shall, upon the sale of a hearing aid or related device, deliver to the customer a bill of sale that must contain:

(a) the seller's signature and license number and the name and address of the seller's permanent place of business;

(b) a description of the make and type of the hearing aid or related device furnished and the amount charged;

(c) any warranty or guaranty and the right to cancel, and the terms of the warranty or guaranty and the right to cancel;

(d) the condition of the hearing aid or related device and whether it is new, used, or reconditioned;

(e) a provision that maintenance service for the hearing aid or related device is available; and

(f) the following statement, in boldface, 12-point type: "If you have any questions regarding your consumer rights with respect to hearing aids and related devices, contact the state Board of Hearing Aid Dispensers." The statement must also list the current telephone number and address of the board's office.

(2) (a) Except as provided in subsection (2)(b), a hearing aid dispenser may not sell a hearing aid to a person unless the person has presented to the hearing aid dispenser a written statement signed by a licensed physician within the previous 6 months that states that the person's hearing loss has been medically evaluated and that the person may benefit from a hearing aid.

(b) If the prospective hearing aid purchaser is 18 years of age or older, the hearing aid dispenser may give that person the opportunity to waive the requirements of subsection (2)(a) in accordance with the disclosure, waiver form, and instructional brochure requirements of the U.S. food and drug administration regulations found at 42 CFR 801.420 and 42 CFR 801.421.

History: En. Sec. 8, Ch. 204, L. 1969; R.C.M. 1947, 66-3008; amd. Sec. 7, Ch. 404, L. 1985; amd. Sec. 2, Ch. 155, L. 1991; amd. Sec. 19, Ch. 481, L. 1997.

Cross-References

Unfair trade practices and consumer protection, Title 30, ch. 14.

37-16-304. Right to cancel — return of hearing aid or related device — notice — refund — dispensing fee rules. (1) A purchaser of a hearing aid or related device may, for any reason, cancel the sale within 30 days of the date of delivery of the hearing aid or related device by providing written notice to the establishment that employed the licensed hearing aid dispenser at the time the hearing aid was purchased indicating the purchaser's intention not to be bound by the sale contract. The purchaser shall return or hold for the licensed hearing aid dispenser's disposal the hearing aid or related device in substantially the same condition as it was received by the purchaser.

(2) For the purpose of determining whether cancellation has occurred within 30 days of the date of delivery, written notice:

(a) given by mail is considered given on the date mailed; and

(b) delivered in person is considered given when delivered to the hearing aid dispenser's permanent place of business.

(3) A licensed hearing aid dispenser shall refund to the purchaser the amount paid for a hearing aid or related device minus any authorized dispensing fee within 10 days of receipt of written notice of cancellation. If the board decides to authorize a dispensing fee, the form and manner of calculating a dispensing fee must be established by the board by rule. Dispensing fee rules adopted by the board may include but are not limited to consideration of business overhead and costs associated with initial hearing evaluations, consultations, fittings, and followup visits.

(4) A licensed hearing aid dispenser may not sell a hearing aid in this state unless the seller provides the buyer with written notice of the 30-day trial period and money-back guarantee.

(5) If the hearing aid must be repaired, remade, or adjusted during the 30-day trial period, the running of the 30-day period must be suspended for each day that the hearing aid is not in the purchaser's possession. The provisions of this subsection may not be waived.

History: En. Sec. 10, Ch. 155, L. 1991; amd. Sec. 20, Ch. 481, L. 1997; amd. Sec. 11, Ch. 230, L. 1999.

Compiler's Comments

1999 Amendment: Chapter 230 in first sentence in (3) after "minus" inserted "any authorized" and substituted second and third sentences regarding form and manner of calculating dispensing fee and board rulemaking authority for former second, third, and fourth sentences that read: "For the purposes of this section, the dispensing fee may not exceed the actual cost of dispensing the hearing aid or related device to the purchaser. This cost must be substantiated by the dispenser, and regardless of the length of the trial period, the dispensing fee may not exceed 15% of the total cost of the hearing aid or related device. The licensed hearing aid dispenser shall also return any goods traded in contemplation of the sale, less any costs incurred by the licensee in making the goods ready for resale"; and made minor changes in style. Amendment effective April 2, 1999.

Part 4

Licensing

Part Cross-References

Contested case as including licensing, 2-4-102.

Contested case procedure, Title 2, ch. 4, part 6.

Licensing to follow contested case procedure, 2-4-631.

Suspension of license fees for persons in military service, 10-1-605.

Unfair trade practices and consumer protection, Title 30, ch. 14.

Duty of Department to investigate unethical conduct, 37-1-101.

Standardized forms, 37-1-104.

Reporting disciplinary actions against licensees, 37-1-105.

Duty of Board to adopt and enforce licensing and certification rules, 37-1-131.

Licensing boards to establish fees commensurate with costs, 37-1-134.

Licensing investigation and review — record access, 37-1-135.

Disciplinary authority of boards — injunctions, 37-1-136.

Grounds for disciplinary action as grounds for license denial — conditions to new licenses, 37-1-137.

Licensure of criminal offenders, Title 37, ch. 1, part 2.

Nondiscrimination in licensing, 49-3-204.

37-16-401. License required. A person may not engage in selling, dispensing, or fitting hearing aids or display a sign or in any other way advertise the selling, dispensing, or fitting of hearing aids in Montana unless the person holds a current license issued by the department.

History: En. Sec. 7, Ch. 304, L. 1969; amd. Sec. 296, Ch. 350, L. 1974; R.C.M. 1947, 66-3007; amd. Sec. 8, Ch. 404, L. 1985; amd. Sec. 2, Ch. 72, L. 1995.

37-16-402. Application — qualifications — fee. An applicant for a license shall pay a fee fixed by the board and commensurate with the costs of processing and administering his application and related functions of the board and shall show to the satisfaction of the board that he:

(1) is a person of good moral character;

(2) has an education equivalent to a 4-year course in an accredited high school or holds a current license as an audiologist under Title 37, chapter 15; and

(3) is free of contagious or infectious disease.

History: En. Sec. 10, Ch. 204, L. 1969; R.C.M. 1947, 66-3010; amd. Sec. 40, Ch. 345, L. 1981; amd. Sec. 8, Ch. 444, L. 1981; amd. Sec. 9, Ch. 404, L. 1985; amd. Sec. 3, Ch. 155, L. 1991.

37-16-403. Examinations — time and place — number of failures allowed. (1) An applicant for a license who is notified by the department that the applicant has fulfilled the requirements of 37-16-402 shall appear at a time and place designated by the board to take written and practical examinations in order to demonstrate that the applicant is qualified to practice the fitting of hearing aids and related devices.

(2) An applicant who fails two successive practical examinations is eligible for reexamination after 2 years have elapsed since the date of the applicant's last examination and after the applicant has completed additional training or education recognized by the board.

History: En. Sec. 11, Ch. 204, L. 1969; amd. Sec. 298, Ch. 350, L. 1974; R.C.M. 1947, 66-3011; amd. Sec. 10, Ch. 404, L. 1985; amd. Sec. 4, Ch. 155, L. 1991; amd. Sec. 3, Ch. 72, L. 1995.

37-16-404. Examinations — subject areas. The examinations provided in 37-16-403 must consist of a test of knowledge and practical tests of proficiency, when they apply, in the following areas as they pertain to the fitting of hearing aids:

(1) acoustics:

(a) general principles;

(b) the decibel;

(c) hearing and speech;

(2) the human ear:

(a) external;

(b) middle;
(c) inner;
(3) the hearing process;
(4) disorders of hearing:
(a) conductive;
(b) sensorineural;
(c) central;
(d) psychogenic;
(5) audiometry:
(a) pure tone;
(b) theory;
(c) procedures;
(d) speech;
(6) the hearing analysis:
(a) audiogram;
(b) auditory area;
(7) hearing aids:
(a) history;
(b) characteristics;
(c) components;
(8) practical use of the otoscope:
(a) earmold;
(b) impression;
(9) fittings:
(a) hearing aid;
(b) earmold;
(10) delivery and checkup; or
(11) any change considered necessary by the board.

History: En. Sec. 12, Ch. 204, L. 1969; R.C.M. 1947, 66-3012; amd. Sec. 90, Ch. 370, L. 1987; amd. Sec. 4, Ch. 72, L. 1995.

37-16-405. Trainee license. (1) An applicant who fulfills the requirements of 37-16-402 and who has not previously applied to take the practical examination under 37-16-403 may apply to the board for a trainee license.

(2) On receiving an application under subsection (1), accompanied by a fee fixed by the board and commensurate with the cost of administering the license and related functions of the board and verification that the applicant has passed the written portion of the examination with a passing score as determined by board rule, the board shall issue a trainee license that entitles the applicant to engage in a 180-day training period during which the applicant:

(a) is required to pass the practical examination administered by the board before being issued a hearing aid dispenser's license; and

(b) shall work under the direct supervision of the sponsoring licensed hearing aid dispenser. During this time the applicant may do the testing necessary for proper selection and fitting of hearing aids and related devices and make necessary impressions. However, the delivery and final fitting of the hearing aid and related devices must be made by the trainee and the supervisor.

(3) The training period must consist of a continuous 180-day term. Any break in training requires application for another trainee license under rules that the board may prescribe.

(4) A trainee license may not be issued unless the board has on file an unrevoked statement from a qualified licensed hearing aid dispenser accepting responsibility for the trainee. Every licensed hearing aid dispenser supervising a trainee license holder shall submit a report every 90 days of the trainee's activities and training assignments, on forms furnished by the board. The supervisor is responsible for all hearing aid fittings of the trainee. A supervisor may terminate any responsibilities to the trainee by mailing by certified mail written notice to the board and the trainee.

(5) (a) If a person who holds a trainee license takes and fails to pass the practical examination during the training period, the board may authorize the department to renew the trainee license for a period of 180 days, during which the provisions of subsection (2)(b) apply. In no event may more than one renewal be permitted.

(b) The fee for renewal must be set by the board commensurate with the cost of administering the license and related functions of the board.

(6) A person licensed as an audiologist under the provisions of Title 37, chapter 15, or a person practicing pursuant to 37-1-305 is exempt from the 180-day training period but is required to pass the examinations prescribed in this chapter.

(7) A licensed hearing aid dispenser who sponsors a trainee is directly responsible and accountable under the disciplinary authority of the board for the conduct of the trainee as if the conduct were the licensee's own.

(8) For the purposes of this section, "direct supervision" means the direct and regular observation and instruction of a trainee by a licensed hearing aid dispenser who is available at the same location for prompt consultation and treatment.

History: En. Sec. 14, Ch. 204, L. 1969; amd. Sec. 299, Ch. 350, L. 1974; R.C.M. 1947, 66-3014; amd. Sec. 41, Ch. 345, L. 1981; amd. Sec. 9, Ch. 444, L. 1981; amd. Sec. 11, Ch. 404, L. 1985; amd. Sec. 5, Ch. 155, L. 1991; amd. Sec. 5, Ch. 72, L. 1995; amd. Sec. 21, Ch. 481, L. 1997.

37-16-406. Admission of licensees from other states. When the board determines that another state or jurisdiction has requirements equivalent to or higher than those in effect under this chapter for the practice of dispensing, fitting, and selling hearing aids and that the state or jurisdiction has a program equivalent to or stricter than the program for determining whether applicants under this chapter are qualified to sell, dispense, and fit hearing aids, the board may authorize the department to issue a license to applicants who hold current, unsuspended, and unrevoked licenses to fit, dispense, and sell hearing aids in the other state or jurisdiction. An applicant for a license under this section is not required to take the practical or written examination but is required to:

(1) pay the fee provided for in 37-16-402;

(2) take a test of the applicant's knowledge of the provisions of Title 37, chapter 16, and applicable rules; and

(3) comply with all other requirements of this chapter.

History: En. Sec. 19, Ch. 204, L. 1969; amd. Sec. 302, Ch. 350, L. 1974; R.C.M. 1947, 66-3019; amd. Sec. 12, Ch. 404, L. 1985; amd. Sec. 6, Ch. 72, L. 1995.

Cross-References

Recognition of out-of-state licenses during disaster or emergency, 10-3-204.

37-16-407. Renewal of license — fee — inactive status. (1) A person who practices the fitting of hearing aids and related devices shall pay to the department a fee as set by the board for a renewal of the person's license. The fee must be fixed by the board to be commensurate with board costs in administering licensure and related board functions. The board shall impose a late fee for renewal applications received after the renewal deadline.

(2) Each applicant for license renewal shall submit evidence showing completion of 10 hours of continuing education completed during the preceding 12 months. The requirements of the continuing education programs are to be determined by the board by rule.

(3) (a) The board may set standards and fees for issuing licenses that designate inactive status.

(b) An inactive licensee may be reinstated to active practice if the inactive licensee:

(i) applies for reinstatement;

(ii) pays a fee set by the board; and

(iii) produces proof satisfactory to the board of completion of the continuing education requirements established by the board.

History: En. Sec. 16, Ch. 204, L. 1969; amd. Sec. 301, Ch. 350, L. 1974; amd. Sec. 14, Ch. 215, L. 1975; R.C.M. 1947, 66-3016; amd. Sec. 42, Ch. 345, L. 1981; amd. Sec. 10, Ch. 444, L. 1981; amd. Sec. 13, Ch. 404, L. 1985; amd. Sec. 6, Ch. 155, L. 1991; amd. Sec. 7, Ch. 72, L. 1995; amd. Sec. 22, Ch. 481, L. 1997; amd. Sec. 22, Ch. 492, L. 1997.

37-16-408. Deposit of fees, fines, and costs. Fees, fines, and costs collected under this chapter, except those collected by a justice's court, must be deposited in the state special revenue fund for the use of the board, subject to appropriations and 37-1-101(6).

History: En. Sec. 20, Ch. 204, L. 1969; amd. Sec. 303, Ch. 350, L. 1974; amd. Sec. 44, Ch. 439, L. 1975; R.C.M. 1947, 66-3020(1); amd. Sec. 11, Ch. 444, L. 1981; amd. Sec. 1, Ch. 277, L. 1983; amd. Sec. 14, Ch. 404, L. 1985; amd. Sec. 26, Ch. 557, L. 1987; amd. Sec. 7, Ch. 155, L. 1991.

Cross-References

Collection and disposition of fines, penalties, forfeitures, and fees, 3-10-601.

37-16-409 and 37-16-410 reserved.

37-16-411. Revocation or suspension of license — investigations — fines. (1) The board may, at its discretion or upon written complaint of an aggrieved person, investigate an alleged violation of this chapter by a licensee or applicant for licensure. If the investigation discloses a probable violation of this chapter, the board may, pursuant to the provisions of 37-1-136, suspend or revoke the accused person's license or suspend or deny the person's application for a fixed period to be determined by the board.

(2) A person licensed under this chapter may have the license revoked or suspended for a fixed period to be determined by the board or be fined not to exceed $500 per incident for any of the following causes:

(a) being convicted of a felony, subject to chapter 1, part 2, of this title. The record of the conviction or a certified copy from the clerk of the court for the district where the conviction occurred or certification by the judge of the court is conclusive evidence of the conviction, except that if the person has been pardoned by a governor or the president of the United States, the conviction does not constitute grounds for revocation or suspension.

(b) securing a license under this chapter through fraud, deceit, or false statements;

(c) the personal use of a false name or alias in professional practice;

(d) violating any of the provisions of this chapter;

(e) obtaining a fee or making any sale by fraud or misrepresentation;

(f) knowingly employing, directly or indirectly, any suspended or unlicensed person to perform any work covered by this chapter;

(g) using or causing or promoting the use of any advertising matter, promotional literature, testimonial, guarantee, warranty, label, brand, insignia, or any other representation, however disseminated or published, that is improbable, misleading, deceptive, or untruthful;

(h) representing that the services or advice of a person licensed to practice medicine or possessing certification as an audiologist will be used or made available in the selection, fitting, adjustment, maintenance, or repair of hearing aids and related devices if that is not true or using the terms "doctor", "clinic", "hearing clinic", "state registered", or other similar words, abbreviations, or symbols that tend to connote the medical profession when that use is not accurate;

(i) permitting another to use the license or certificate;

(j) defaming competitors by falsely imputing to them dishonorable conduct, inability to perform contracts, or questionable credit standing or by other false representations or falsely disparaging the products of competitors in any respect or their business methods, selling prices, values, credit terms, policies, or services;

(k) using any method of advertising prohibited by trade practice rules 1 through 17 of the federal trade commission;

(l) obtaining information concerning the business of a competitor by bribery of an employee or agent of that competitor, by false or misleading statements or representations, by the impersonation of one in authority, or by any other unlawful means;

(m) directly or indirectly giving or offering to give or permitting or causing to be given money or anything of value to any person who advises another in a professional capacity as an inducement to influence others to purchase or contract to purchase products sold or offered for sale by a hearing aid dispenser or influencing persons to refrain from dealing in the products of competitors;

(n) unethical conduct or gross incompetence or negligence in the performance of professional duties, including repeated failure to make indicated medical referrals of customers;

(o) selling a hearing aid or related device to a person who has not been given tests using appropriate established procedures and instrumentation in fitting hearing aids or related devices, except for the sale of a replacement hearing aid or a related device of the same make and model within 1 year of the original sale;

(p) falsifying hearing test or evaluation results or any associated client records;

(q) refusing to cooperate with an investigation by the board by:

(i) failing to furnish requested records or documents;

(ii) failing to furnish a complete explanation of matters referred to in the complaint;

(iii) failing to respond to a subpoena issued by the board;

(iv) willfully misrepresenting any relevant fact to a board investigator; or

(v) attempting to discourage a potential witness from cooperating with a board investigator or from testifying by using threats, harassment, extortion, or bribery.

History: En. Sec. 17, Ch. 204, L. 1969; amd. Sec. 27, Ch. 101, L. 1977; R.C.M. 1947, 66-3017; amd. Sec. 15, Ch. 404, L. 1985; amd. Sec. 8, Ch. 155, L. 1991; amd. Sec. 8, Ch. 72, L. 1995.

37-16-412. Revocation, suspension, or denial — notice and hearing. No license issued under this chapter may be suspended, revoked, denied, or renewal denied without notice and opportunity for a hearing as provided under the Montana Administrative Procedure Act.

History: En. Sec. 22, Ch. 204, L. 1969; amd. Sec. 304, Ch. 350, L. 1974; amd. Sec. 28, Ch. 101, L. 1977; R.C.M. 1947, 66-3022; amd. Sec. 12, Ch. 444, L. 1981.

37-16-413. Penalty for unlawful practice — injunction. (1) Any person who practices the selling, fitting, or dispensing of hearing aids without a valid license shall be guilty of a misdemeanor and upon conviction be fined not more than $500 or be imprisoned for not more than 90 days, or both.

(2) The board may enforce any provision of this chapter by injunction or by any other appropriate proceeding.

History: En. Sec. 21, Ch. 204, L. 1969; R.C.M. 1947, 66-3021; amd. Sec. 16, Ch. 404, L. 1985.

Cross-References

Issuance of injunctions on nonjudicial days, 3-1-302, 3-5-302.

Contempts, Title 3, ch. 1, part 5.

Prosecutorial duties of County Attorney, 7-4-2712.

Duties of County Attorney relating to state matters, 7-4-2716.

Injunctions, Rule 65, M.R.Civ.P. (see Title 25, ch. 20); Title 27, ch. 19.

Affidavits, Title 26, ch. 1, part 10.

37-16-414. Repealed. Sec. 128, Ch. 429, L. 1995.

History: En. Sec. 9, Ch. 155, L. 1991.

CHAPTER 17

PSYCHOLOGISTS

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Chapter Cross-References

Psychologist-client privilege, 26-1-807.

Liability of mental health professionals, Title 27, ch. 1, part 11.

Duty to warn of violent behavior, 27-1-1102.

Validity of consent to medical treatment, Title 41, ch. 1, part 4.

Child abuse and neglect — reports and investigations, Title 41, ch. 3, part 2.

Abuse or neglect of elderly or persons with developmental disabilities — duty to report, 52-3-811.

Part 1
General

37-17-101. Purpose. The legislature finds and declares that the practice of psychology in Montana affects the public health, safety, and welfare and should therefore be subject to regulation and control in the public interest in order to protect the public from the unauthorized and unqualified practice of psychology and from unprofessional conduct by persons licensed to practice psychology.

History: En. Sec. 1, Ch. 73, L. 1971; R.C.M. 1947, 66-3201.

37-17-102. Definitions. Unless the context requires otherwise, in this chapter, the following definitions apply:

(1) "Accredited college or university" means a college or university accredited by the regional accrediting association for institutions of higher learning, such as the northwest association of schools and colleges.

(2) "Board" means the board of psychologists provided for in 2-15-1851.

(3) "Department" means the department of commerce provided for in Title 2, chapter 15, part 18.

(4) (a) "Practice of psychology" means the observation, description, interpretation, and modification of human behavior by the application of psychological principles, methods, and procedures for the purpose of eliminating symptomatic, maladaptive, or undesired behavior and improving interpersonal relations, work and life adjustment, personal effectiveness, and mental health.

(b) The practice of psychology includes but is not limited to psychological testing and evaluation or assessment of personal characteristics such as intelligence, personality, abilities, interests, aptitudes, and neuropsychological functioning; counseling, psychoanalysis, psychotherapy, hypnosis, biofeedback, and behavior analysis and therapy; diagnosis and treatment of mental and emotional disorders or disabilities, chemical dependency, substance abuse, and the psychological aspects of physical illness, accident, injury, or disability; and psychoeducational evaluation, therapy, remediation, and consultation.

(5) A person represents to the public that the person is a "psychologist" when the person uses a title or description of services incorporating the words "psychologist", "psychological", "psychologic", or "psychology" and offers to render or renders psychological services defined in subsection (4) to individuals, groups, corporations, or the public, whether or not the person does so for compensation or fee.

History: En. Sec. 2, Ch. 73, L. 1971; amd. Sec. 312, Ch. 350, L. 1974; R.C.M. 1947, 66-3202; amd. Sec. 13, Ch. 22, L. 1979; amd. Sec. 3, Ch. 274, L. 1981; amd. Sec. 5, Ch. 324, L. 1981; amd. Sec. 1, Ch. 347, L. 1987; amd. Sec. 44, Ch. 18, L. 1995.

37-17-103. Limitation of license authority. Nothing in this chapter shall be construed as permitting psychologists to prescribe drugs, perform surgery, or administer electroconvulsive therapy.

History: En. Sec. 14, Ch. 73, L. 1971; R.C.M. 1947, 66-3214(2).

37-17-104. Exemptions. This chapter does not prevent:

(1) qualified members of other professions, such as physicians, social workers, lawyers, pastoral counselors, or educators, from doing work of a psychological nature consistent with their training if they do not hold themselves out to the public by a title or description incorporating the words "psychology" or "psychologist";

(2) the activities, services, and use of an official title clearly delineating the nature and level of training on the part of a person in the employ of a federal, state, county, or municipal agency or of other political subdivisions or an educational or charitable institution insofar as these activities and services are a part of the duties of his office or position with the agency or institution;

(3) the activities and services of a student, intern, or resident in psychology pursuing a course of study at an accredited university or college or working in a generally recognized training center if these activities and services constitute a part of his supervised course of study;

(4) the activities and services of a person who is not a resident of this state in rendering consulting psychological services in this state when these services are rendered for a period which does not exceed, in the aggregate, 60 days during a calendar year if the person is authorized under the laws of the state or country of his residence to perform these activities and services; however, these persons shall report to the department the nature and extent of the services in this state if they exceed 10 days in a calendar year;

(5) a person authorized by the laws of the state or country of his former residence to perform activities and services, who has recently become a resident of this state and who has applied for a license in this state, from performing such activities and services pending disposition of his application;

(6) the use of the term "social psychologist" by a person who:

(a) has been graduated with a doctoral degree in sociology or social psychology from an institution and whose credits in sociology or social psychology are acceptable by a recognized educational institution;

(b) has passed comprehensive examinations in the field of social psychology as part of the requirement for the doctoral degree or who has had equivalent specialized training in social psychology; and

(c) has filed with the department a statement of facts demonstrating his compliance with this subsection;

(7) the offering of lecture services for a fee by a person exempted from licensing requirements by virtue of his employment;

(8) activities of a psychological nature on the part of a person who is a salaried employee of an accredited academic institution, governmental agency, research laboratory, or business corporation if he is performing the duties for which he is employed by the organization within the confines of the organization.

History: En. Sec. 3, Ch. 73, L. 1971; amd. Sec. 313, Ch. 350, L. 1974; R.C.M. 1947, 66-3203(2); amd. Sec. 14, Ch. 22, L. 1979; amd. Sec. 6, Ch. 324, L. 1981; amd. Sec. 2, Ch. 347, L. 1987.

Part 2

Board of Psychologists

Part Cross-References

Right to know, Art. II, sec. 9, Mont. Const.

Seal defined, 1-4-201.

Open meetings, Title 2, ch. 3, part 2.

Meeting defined, 2-3-202.

Adoption and publication of rules, Title 2, ch. 4, part 3.

Allocation of boards for administrative purposes, 2-15-121.

Quasi-judicial boards, 2-15-124.

Duties of Attorney General, 2-15-501.

Board established, 2-15-1851.

Duties of Department, Director, and boards, Title 37, ch. 1, part 1.

Disrupting meeting as disorderly conduct, 45-8-101.

37-17-201. Meetings — expenses of members — attorney general as board attorney — seal. (1) The board shall hold a regular annual meeting in which it shall select from its members a chairman and a secretary. Other regular meetings shall be held at such times as the rules of the board provide. Special meetings may be held at times considered necessary or advisable by the chairman and the majority of its members or on the request of the governor. Reasonable notice of meetings shall be given in the manner prescribed by the board. The quorum of the board consists of the majority of its members. The department shall keep a record of the board's proceedings.

(2) Each board member shall receive compensation and travel expenses as provided for in 37-1-133.

(3) The attorney general shall act as attorney for the board. He or his representative may sit as an ex officio member of the board in an advisory capacity only.

(4) The board shall adopt an official seal.

History: En. Sec. 5, Ch. 73, L. 1971; amd. Sec. 315, Ch. 350, L. 1974; amd. Sec. 12, Ch. 453, L. 1977; R.C.M. 1947, 66-3205(1), (2), (4), (5); amd. Sec. 21, Ch. 474, L. 1981.

37-17-202. Powers. (1) The board may make reasonable and necessary rules for the proper performance of its duties and for the regulation of proceedings before it.

(2) In addition to the other powers and duties set forth, the board may:

(a) revoke and suspend licenses;

(b) conduct hearings upon complaints concerning persons licensed under this chapter;

(c) cause the prosecution and enjoinder of all persons violating this chapter, by the complaint of its secretary signed with the county attorney, in the county where the violation took place and incur necessary expenses for the prosecution; and

(d) study and review new developments in research, training, and the practice of psychology and make recommendations to the governor and other state officials regarding new and revised programs and legislation related to psychology which could be beneficial to the citizens of the state of Montana.

History: (1)En. Sec. 5, Ch. 73, L. 1971; amd. Sec. 315, Ch. 350, L. 1974; amd. Sec. 12, Ch. 453, L. 1977; Sec. 66-3205, R.C.M. 1947; (2)En. Sec. 7, Ch. 73, L. 1971; Sec. 66-3207, R.C.M. 1947; R.C.M. 1947, 66-3205(3), 66-3207; amd. Sec. 3, Ch. 671, L. 1991; amd. Sec. 62, Ch. 429, L. 1995.

Part 3
Licensing

Part Cross-References

Licensing to follow contested case procedure, 2-4-631.

Suspension of license fees for persons in military service, 10-1-605.

Duty of Department to administer and grade examinations, 37-1-101.

Duty of Board to adopt and enforce licensing and certification rules, 37-1-131.

Licensing boards to establish fees commensurate with costs, 37-1-134.

Licensing investigation and review — record access, 37-1-135.

Grounds for disciplinary action as grounds for license denial — conditions to new licenses, 37-1-137.

Licensure of criminal offenders, Title 37, ch. 1, part 2.

Nondiscrimination in licensing, 49-3-204.

37-17-301. License required. A person may not represent himself to be a psychologist or engage in the practice of psychology unless he is licensed under this chapter.

History: En. Sec. 3, Ch. 73, L. 1971; amd. Sec. 313, Ch. 350, L. 1974; R.C.M. 1947, 66-3203(1).

37-17-302. Application — qualifications. (1) Application for examination for licensure as a psychologist must be made on forms prescribed by the board.

(2) The board shall license as a psychologist any person who pays the prescribed fee, passes the prescribed examination, and submits evidence by oath that the person:

(a) is 18 years of age or older;

(b) is of good moral character;

(c) (i) has received a doctoral degree in clinical psychology from an accredited college or university having an appropriate graduate program approved by the American psychological association;

(ii) has received a doctoral degree in psychology from an accredited college or university not approved by the American psychological association and has successfully completed a formal graduate retraining program in clinical psychology approved by the American psychological association; or

(iii) has received a doctoral degree in psychology from an accredited college or university and has completed a course of studies that meets minimum standards specified in rules by the board; and

(d) has completed at the time of application a minimum of 2 years of supervised experience in the practice of psychology. One year of this experience must be postdoctoral but may not include more than 6 months of supervised research, teaching, or a combination of both.

History: En. Sec. 8, Ch. 73, L. 1971; amd. Sec. 25, Ch. 94, L. 1973; amd. Sec. 317, Ch. 350, L. 1974; R.C.M. 1947, 66-3208(1), (2); amd. Sec. 3, Ch. 347, L. 1987; amd. Sec. 4, Ch. 671, L. 1991; amd. Sec. 1, Ch. 362, L. 1995.

37-17-303. Examination. (1) The department shall administer examinations to qualified applicants for licensing at least once a year, subject to 37-1-101. The board shall determine the subject and scope of specialized psychological areas and techniques for examination. Examinations may be written, oral, or both. The board shall determine an acceptable level of performance for each examination.

(2) An applicant who fails his first examination may be reexamined at a subsequent examination on the payment of another examination fee. An applicant who fails two successive examinations may apply for reexamination after 1 year of additional professional experience or training.

History: En. Sec. 6, Ch. 73, L. 1971; amd. Sec. 316, Ch. 350, L. 1974; R.C.M. 1947, 66-3206(1), (2); amd. Sec. 4, Ch. 347, L. 1987.

37-17-304. Admission of licensees from other states or jurisdictions. A license without written examination may be issued to a psychologist licensed or certified in another state or Canadian jurisdiction upon meeting criteria or entering into an agreement established by the board.

History: En. Sec. 8, Ch. 73, L. 1971; amd. Sec. 25, Ch. 94, L. 1973; amd. Sec. 317, Ch. 350, L. 1974; R.C.M. 1947, 66-3208(3); amd. Sec. 58, Ch. 10, L. 1993; amd. Sec. 2, Ch. 362, L. 1995.

Cross-References

Recognition of out-of-state licenses during disaster or emergency, 10-3-204.

37-17-305. Issuance of license. The department shall issue a license to each person who meets the requirements for licensure as prescribed in this chapter. The license shall include the dates of issuance and expiration and shall bear a serial number. It shall be signed by the secretary of the board under the seal of the board.

History: En. Sec. 6, Ch. 73, L. 1971; amd. Sec. 316, Ch. 350, L. 1974; R.C.M. 1947, 66-3206(3).

37-17-306. Renewal. (1) The license expires on the date set by department rule. The department shall notify each person licensed under this chapter relative to the date of the expiration and the amount of the renewal fee. This notice must be mailed to each licensed psychologist at the licensee's listed address at least 1 month before the expiration of the license.

(2) Renewal may be made by application during the 60 days prior to the expiration date. Failure on the part of a person licensed to pay the renewal fee by the expiration date does not deprive the person of the right to renew, but the fee must be increased 10% for each month or major portion of a month that the payment of the renewal fee is delayed after the expiration date. The maximum fee for delayed renewal may not exceed twice the normal renewal fee. Application for renewal following a lapse of 1 year or more will be subject

to review by the board, and the applicant may be requested to complete an examination successfully if the board so determines.

History: En. Sec. 6, Ch. 73, L. 1971; amd. Sec. 316, Ch. 350, L. 1974; R.C.M. 1947, 66-3206(4), (5); amd. Sec. 5, Ch. 671, L. 1991; amd. Sec. 63, Ch. 429, L. 1995.

37-17-307. Fees — deposit of fees. (1) The department shall collect the following fees, none of which is refundable:

(a) application fee;

(b) examination fee, an amount commensurate with the charge of the professional examination service and administrative costs of the department and as set by the board;

(c) certificate fee;

(d) renewal fee.

(2) Fees received by the department must be deposited in the state special revenue fund for the use of the board, subject to 37-1-101(6).

History: En. Sec. 11, Ch. 73, L. 1971; amd. Sec. 1, Ch. 59, L. 1974; amd. Sec. 319, Ch. 350, L. 1971; R.C.M. 1947, 66-3211; amd. Sec. 43, Ch. 345, L. 1981; amd. Sec. 1, Ch. 277, L. 1983; amd. Sec. 6, Ch. 671, L. 1991; amd. Sec. 64, Ch. 429, L. 1995.

37-17-308. Department to publish list of licensees. The department shall publish yearly a list of psychologists licensed under this chapter. This list must contain names, addresses, and other information the board considers advisable. The department shall mail a copy of this list to each person licensed under this chapter.

History: En. Sec. 6, Ch. 73, L. 1971; amd. Sec. 316, Ch. 350, L. 1974; R.C.M. 1947, 66-3206(6); amd. Sec. 3, Ch. 362, L. 1995.

Cross-References

Prohibition on distribution or sale of mailing lists, 2-6-109.

37-17-309. Foreign-trained applicants. The transcripts of a foreign-trained applicant for licensure as a psychologist must be evaluated by a board-approved agency that reviews credentials. Upon receipt of this evaluation, the board shall determine whether the number of academic credits awarded and academic areas studied meets equivalent educational standards for a doctoral degree in clinical psychology established by a graduate program approved by the American psychological association.

History: En. Sec. 4, Ch. 362, L. 1995.

37-17-310. Licensure of senior psychologists. The board may issue a senior psychologist's license to an applicant who:

(1) has been licensed to practice psychology in a United States or Canadian jurisdiction for at least 20 years if the license required a doctoral degree;

(2) provides documentation demonstrating at least 10 years of clinical experience in the last 15 years prior to filing the application;

(3) has not been subject to any disciplinary action during the entire period of licensure;

(4) has passed Montana's oral examination; and

(5) has submitted an application and paid the fees required in this chapter and in the rules of the board.

History: En. Sec. 5, Ch. 362, L. 1995.

37-17-311. Repealed. Sec. 128, Ch. 429, L. 1995.

History: En. Sec. 9, Ch. 73, L. 1971; amd. Sec. 318, Ch. 350, L. 1974; R.C.M. 1947, 66-3209; amd. Sec. 7, Ch. 324, L. 1981; amd. Sec. 5, Ch. 347, L. 1987.

37-17-312. Penalty. Any person who violates any of the provisions of this chapter shall be guilty of a misdemeanor punishable by imprisonment in the county jail not exceeding 6 months or by a fine not exceeding $500, or by both.

History: En. Sec. 13, Ch. 73, L. 1971; R.C.M. 1947, 66-3213.

Cross-References

Prosecutorial duties of County Attorney, 7-4-2712.

Duties of County Attorney relating to state matters, 7-4-2716.

37-17-313. Injunction for unlawful practice. The practice of psychology in any way other than as defined in this chapter may be enjoined by the district court on petition by the board. In any such proceeding, it shall not be necessary to show that any person is individually injured by the actions complained of. If the respondent is found to have so practiced, the court shall enjoin him from so practicing unless and until he has been duly licensed. Procedure in such cases shall be the same as in any other injunction suit. The remedy by injunction hereby given is in addition to criminal prosecution and punishment.

History: En. Sec. 14, Ch. 73, L. 1971; R.C.M. 1947, 66-3214(1).

Cross-References

Issuance of injunctions on nonjudicial days, 3-1-302, 3-5-302.

Contempts, Title 3, ch. 1, part 5.

Injunctions, Rule 65, M.R.Civ.P. (see Title 25, ch. 20); Title 27, ch. 19.

Affidavits, Title 26, ch. 1, part 10.

Disciplinary authority of boards — injunctions, 37-1-136.

37-17-314. Immunity from liability. There is no liability on the part of and no cause of action may arise against a psychologist for a statement made in good faith in reporting another psychologist's apparent violation of the provisions of this chapter or rules adopted by the board.

History: En. Sec. 7, Ch. 347, L. 1987.

Cross-References

Health care practitioners — nonliability for peer review, Title 37, ch. 2, part 2.

Pharmacists — nonliability for peer review, 37-7-1101.

Physical therapists — nonliability for reporting violations to licensing Board, 37-11-320.

37-17-315 through 37-17-317 reserved.

37-17-318. Repealed. Sec. 128, Ch. 429, L. 1995.

History: En. Sec. 1, Ch. 671, L. 1991.

CHAPTER 18

VETERINARY MEDICINE

Part 1 — General

37-18-101. Definitions.
37-18-102. Veterinary medicine defined.
37-18-103. Repealed.
37-18-104. Exemptions — rules.

Part 2 — Board of Veterinary Medicine

37-18-201. Organization — meetings.
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Part 3 — Licensing—Veterinary Medicine

37-18-301. License required.
37-18-302. Application — qualification — fee.
37-18-303. Examination — temporary permit pending examination.
37-18-304. Repealed.
37-18-305. License — issuance and contents.
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37-18-307. Renewal — fee — continuing education — automatic renewal for military personnel.
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37-18-311. Repealed.
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Part 4 — Licensing—Veterinary Technology
(Repealed. Sec. 7, Ch. 96, L. 1981)

Part 5 — Remedies for Violation

37-18-501. Penalty.
37-18-502. Injunction.

Chapter Cross-References

Rules on veterinary practice to be included in standards for horseracing, 23-4-104.

Professional service corporations, Title 35, ch. 4.

Part 1
General

37-18-101. Definitions. Unless the context requires otherwise, in this chapter the following definitions apply:

(1) "Board" means the board of veterinary medicine provided for in 2-15-1852.

(2) "Department" means the department of commerce provided for in Title 2, chapter 15, part 18.

History: En. 66-2201.1 by Sec. 205, Ch. 350, L. 1974; R.C.M. 1947, 66-2201.1; amd. Sec. 3, Ch. 274, L. 1981; amd. Sec. 2, Ch. 43, L. 1985.

37-18-102. Veterinary medicine defined. (1) A person is considered practicing veterinary medicine when he does any of the following:

(a) represents himself as or is engaged in the practice of veterinary medicine in any of its branches, either directly or indirectly;

(b) uses words, titles, or letters in this connection or on a display or advertisement or under circumstances so as to induce the belief the person using them is engaged in the practice of veterinary medicine. This use is prima facie evidence of the intention to represent oneself as engaged in the practice of veterinary medicine in any of its branches.

(c) diagnoses, prescribes, or administers a drug, medicine, appliance, application, or treatment of whatever nature or performs a surgical operation or manipulation for the prevention, cure, or relief of a pain, deformity, wound, fracture, bodily injury, physical condition, or disease of animals;

(d) instructs, demonstrates, or solicits by a notice, sign, or other indication, with contract either express or implied, or otherwise, with or without the necessary instruments, for the administration of biologics or medicines or animal disease cures for the prevention and treatment of disease of animals and remedies for the treatment of internal parasites in animals;

(e) performs a manual or laboratory procedure on livestock for the diagnosis of pregnancy, sterility, or infertility for remuneration or hire;

(f) performs acupuncture, ova or embryo transfer, or dentistry on animals;

(g) instructs others, except those covered under the provisions of 37-18-104(4), for compensation, in any manner how to perform any acts which constitute the practice of veterinary medicine.

(2) Nothing in subsection (1)(e) of this section shall in any way be construed to prohibit the pregnancy testing by any person of his own farm animals or by his employees regularly employed in the conduct of his business or by other persons whose services are rendered gratuitously.

(3) Nothing in this section shall be construed as modifying, amending, altering, or repealing any part of 37-18-104.

History: (1)En. Sec. 9, Ch. 82, L. 1913; re-en. Sec. 3225, R.C.M. 1921; re-en. Sec. 3225, R.C.M. 1935; amd. Sec. 7, Ch. 90, L. 1955; amd. Sec. 1, Ch. 191, L. 1965; amd. Sec. 211, Ch. 350, L. 1974; amd. Sec. 7, Ch. 135, L. 1975; Sec. 66-2209, R.C.M. 1947; (2)En. Sec. 2, Ch. 191, L. 1965; Sec. 66-2209.1, R.C.M. 1947; (3)En. Sec. 3, Ch. 191, L. 1965; Sec. 66-2209.2, R.C.M. 1947; R.C.M. 1947, 66-2209(1), 66-2209.1, 66-2209.2; amd. Sec. 3, Ch. 43, L. 1985; amd. Sec. 1, Ch. 650, L. 1989.

37-18-103. Repealed. Sec. 7, Ch. 96, L. 1981.

History: En. 66-2213 by Sec. 1, Ch. 135, L. 1975; R.C.M. 1947, 66-2213(2).

37-18-104. Exemptions — rules. (1) This chapter does not apply to:

(a) veterinarians in the performance of their official duties, either civil or military, in the service of the United States unless they engage in the practice of veterinary medicine in a private capacity;

(b) laboratory technicians and veterinary research workers, as distinguished from veterinarians, in the employ of this state or the United States and engaged in labors in laboratories under the direct supervision of the board of livestock, Montana state university-Bozeman, or the United States;

(c) lawfully qualified veterinarians from other states or a foreign country meeting legally licensed and registered Montana veterinarians in this state in consultation;

(d) a veterinarian residing on a border of a neighboring state and authorized under the laws of that state to practice veterinary medicine, who is actually called to attend cases in this state but who does not open an office or appoint a place to meet patients or receive calls in this state, if veterinarians licensed and registered in this state are extended a like privilege to engage in the practice of veterinary medicine to the same extent in the neighboring state;

(e) the employment of veterinary medical students who have successfully completed 3 years of the professional curriculum in veterinary medicine at a college having educational standards equal to those approved by the American veterinary medical association, if the students are employed by and work under the immediate supervision of a veterinarian licensed and registered under this chapter; or

(f) a person advising with respect to or performing acts that the board defines by rule as accepted livestock management practices.

(2) The operations known and designated as castrating or dehorning of cattle, sheep, horses, and swine are not the practice of veterinary medicine within the meaning of this chapter.

(3) Nonsurgical embryo transfers in bovines may be performed under the supervision of a veterinarian licensed and residing in Montana. At a minimum, board rules regarding nonsurgical embryo transfers in bovines must address:

(a) minimum education requirements;

(b) minimum requirements of practical experience;

(c) continuing education requirements;

(d) limitations on practices and procedures that may be performed by certified individuals;

(e) the use of specific drugs necessary for safe and proper practice of certified procedures;

(f) content and administration of the certification test, including written and practical testing;

(g) application and reexamination procedures; and

(h) conduct of certified individuals, including rules for suspension, revocation, and denial of certification.

(4) This chapter does not prohibit a person from caring for and treating the person's own farm animals or being assisted in this treatment by the person's full-time employees, as defined in 2-18-601, employed in the conduct of the person's business or by other persons whose services are rendered gratuitously in case of emergency.

(5) This chapter does not prohibit the selling of veterinary remedies and instruments by a registered pharmacist at the pharmacist's regular place of business.

(6) This chapter does not prohibit an employee of a licensed veterinarian from performing activities determined by board rule to be acceptable, when performed under the supervision of the employing veterinarian.

(7) This chapter does not prohibit an employee of a licensed veterinarian from rendering care for that veterinarian's animal patients in cases of emergency. Permissible emergency employee activities under this subsection include activities determined by board rule to be acceptable but do not include the performance of surgery or the rendering of diagnoses.

History: En. Sec. 11, Ch. 82, L. 1913; re-en. Sec. 3227, R.C.M. 1921; re-en. Sec. 3227, R.C.M. 1935; amd. Sec. 9, Ch. 90, L. 1955; amd. Sec. 213, Ch. 350, L. 1974; amd. Sec. 8, Ch. 135, L. 1975; R.C.M. 1947, 66-2211; amd. Sec. 4, Ch. 43, L. 1985; amd. Sec. 2, Ch. 650, L. 1989; amd. Sec. 1, Ch. 21, L. 1991; amd. sec. 36, Ch. 308, L. 1995; amd. Sec. 1, Ch. 75, L. 1997.

Part 2

Board of Veterinary Medicine

Part Cross-References

Right to know, Art. II, sec. 9, Mont. Const.

Open meetings, Title 2, ch. 3, part 2.

Meeting defined, 2-3-202.

Adoption and publication of rules, Title 2, ch. 4, part 3.

Public records, Title 2, ch. 6.

Prohibition on distribution and sale of mailing lists, 2-6-109.

Allocation of boards for administrative purposes, 2-15-121.

Quasi-judicial boards, 2-15-124.

Board established, 2-15-1852.

Prosecutorial duties of County Attorney, 7-4-2712.

Duties of County Attorney relating to state matters, 7-4-2716.

Duties of Department, Director, and boards, Title 37, ch. 1, part 1.

Licensing investigation and review — record access, 37-1-135.

Disrupting meeting as disorderly conduct, 45-8-101.

37-18-201. Organization — meetings. (1) A board member shall receive a certificate of appointment from the governor.

(2) The board shall annually elect from its members a president, vice-president, and secretary-treasurer and shall hold at least two regular meetings each year. At a meeting four members of the board constitute a quorum. If a member of the board, without cause, absents himself from two of its regular meetings consecutively, his office is vacant.

History: En. Sec. 2, Ch. 82, L. 1913; re-en. Sec. 3218, R.C.M. 1921; re-en. Sec. 3218, R.C.M. 1935; amd. Sec. 2, Ch. 90, L. 1955; amd. Sec. 206, Ch. 350, L. 1974; amd. Sec. 5, Ch. 135, L. 1975; R.C.M. 1947, 66-2202(1), (2).

37-18-202. Powers of board and department — examinations. (1) The board may adopt rules and orders necessary for the performance of its duties, including but not limited to:

(a) prescribing of forms for application for examination and license;

(b) preparation of examinations; and

(c) clarifying the use of support personnel and the provision of emergency services.

(2) The department shall, subject to 37-1-101, supervise the examination of applicants for license to practice veterinary medicine, obtain the services of professional examination agencies instead of its own preparation of examinations, and grant and revoke licenses.

History: En. Sec. 2, Ch. 82, L. 1913; re-en. Sec. 3218, R.C.M. 1921; re-en. Sec. 3218, R.C.M. 1935; amd. Sec. 2, Ch. 90, L. 1955; amd. Sec. 206, Ch. 350, L. 1974; amd. Sec. 5, Ch. 135, L. 1975; R.C.M. 1947, 66-2202(3), (4); amd. Sec. 3, Ch. 96, L. 1981; amd. Sec. 3, Ch. 650, L. 1989; amd. Sec. 65, Ch. 429, L. 1995; amd. Sec. 2, Ch. 75, L. 1997.

37-18-203. Compensation and expenses of members — department records of board proceedings and licensees. (1) Each member of the board is entitled to receive compensation and travel expenses as provided for in 37-1-133.

(2) The department shall keep complete records of the board's proceedings and of its receipts and disbursements and a full and accurate list of persons licensed and registered by the board. These records are public records and are at all times open to public inspection.

History: En. Sec. 3, Ch. 82, L. 1913; re-en. Sec. 3219, R.C.M. 1921; re-en. Sec. 3219, R.C.M. 1935; amd. Sec. 3, Ch. 90, L. 1955; amd. Sec. 126, Ch. 147, L. 1963; amd. Sec. 27, Ch. 177, L. 1965; amd. Sec. 26, Ch. 93, L. 1969; amd. Sec. 207, Ch. 350, L. 1974; amd. Sec. 38, Ch. 439, L. 1975; amd. Sec. 3, Ch. 531, L. 1977; R.C.M. 1947, 66-2203(1), (2); amd. Sec. 22, Ch. 474, L. 1981.

Part 3

Licensing — Veterinary Medicine

Part Cross-References

Licensing to follow contested case procedure, 2-4-631.

Suspension of license fees for persons in military service, 10-1-605.

Duty of Department to administer and grade examinations, 37-1-101.

Standardized forms, 37-1-104.

Duty of Board to adopt and enforce licensing and certification rules, 37-1-131.

Licensing boards to establish fees commensurate with costs, 37-1-134.

Licensing investigation and review — record access, 37-1-135.

Grounds for disciplinary action as grounds for license denial — conditions to new licenses, 37-1-137.

Licensure of criminal offenders, Title 37, ch. 1, part 2.

Nondiscrimination in licensing, 49-3-204.

37-18-301. License required. A person may not practice veterinary medicine or veterinary surgery in this state unless licensed and registered as required by this chapter, nor may a person practice veterinary medicine or surgery whose authority to practice is suspended or revoked by the board.

History: En. Sec. 9, Ch. 82, L. 1913; re-en. Sec. 3225, R.C.M. 1921; re-en. Sec. 3225, R.C.M. 1935; amd. Sec. 7, Ch. 90, L. 1955; amd. Sec. 1, Ch. 191, L. 1965; amd. Sec. 211, Ch. 350, L. 1974; amd. Sec. 7, Ch. 135, L. 1975; R.C.M. 1947, 66-2209(2).

37-18-302. Application — qualification — fee. A person desiring to begin the practice of veterinary medicine or veterinary surgery in this state or who desires to hold out to the public that the person is a practitioner of veterinary medicine or veterinary surgery, except as provided in 37-18-104, shall apply to the department for a license to do so. The application must be on a form furnished by the department, must be accompanied by satisfactory evidence of the good moral character of the applicant, and must contain evidence of the applicant's having received a degree from a legally authorized veterinary medical school having educational standards equal to those approved by the American veterinary medical association. On application, a certified transcript of the applicant must be submitted to the department for inspection and verification. The certified transcript remains the property of the department. A person applying for a license to practice shall pay to the department a nonrefundable fee commensurate with the costs of the examinations and set by the board.

History: En. Sec. 4, Ch. 82, L. 1913; amd. Sec. 1, Ch. 150, L. 1919; re-en. Sec. 3220, R.C.M. 1921; re-en. Sec. 3220, R.C.M. 1935; amd. Sec. 4, Ch. 90, L. 1955; amd. Sec. 127, Ch. 147, L. 1963; amd. Sec. 7, Ch. 168, L. 1971; amd. Sec. 208, Ch. 350, L. 1974; R.C.M. 1947, 66-2204(part); amd. Sec. 1, Ch. 431, L. 1979; amd. Sec. 5, Ch. 341, L. 1981; amd. Sec. 2, Ch. 21, L. 1991; amd. Sec. 12, Ch. 230, L. 1999.

Compiler's Comments

1999 Amendment: Chapter 230 in third sentence substituted "certified transcript" for "photostatic copy of the diploma"; in fourth sentence substituted "certified transcript" for "photostatic copy"; and made minor changes in style. Amendment effective October 1, 1999.

37-18-303. Examination — temporary permit pending examination. (1) Subject to 37-1-101, the board shall, by means of examination as prescribed by the board, ascertain the professional qualifications for license of applicants under this part. The department shall issue a license to applicants who are found to be, in the judgment of the board, competent to practice. A license may not be issued to a person who is not found by the examination or investigation to be competent and qualified.

(2) Examinations must be held as determined necessary by the board, but not less frequently than once each year at a time and place specified by the board. The board may employ, cooperate with, or contract with any organization or consultant in the preparation, administration, and grading of an examination, but the board shall retain sole discretion and responsibility for determining which applicants have successfully passed an examination.

(3) The department shall consecutively number applications received, note on each the disposition made of it, and preserve the applications for reference. The board shall also number consecutively licenses issued.

(4) An applicant is required to achieve a passing grade, as determined by the board by rule, in order to obtain a license. An applicant who has failed an examination may apply to be reexamined at a subsequent examination and shall pay another application fee commensurate with the costs of the examinations as set by the board and shall take another complete examination in all subjects.

History: En. Sec. 4, Ch. 82, L. 1913; amd. Sec. 1, Ch. 150, L. 1919; re-en. Sec. 3220, R.C.M. 1921; re-en. Sec. 3220, R.C.M. 1935; amd. Sec. 4, Ch. 90, L. 1955; amd. Sec. 127, Ch. 147, L. 1963; amd. Sec. 7, Ch. 168, L. 1971; amd. Sec. 208, Ch. 350, L. 1974; R.C.M. 1947, 66-2204(part); amd. Sec. 2, Ch. 431, L. 1979; amd. Sec. 4, Ch. 96, L. 1981; amd. Sec. 3, Ch. 21, L. 1991; amd. Sec. 66, Ch. 429, L. 1995; amd. Sec. 13, Ch. 230, L. 1999.

Compiler's Comments

1999 Amendment: Chapter 230 in first sentence in (1) after "examination" deleted "either oral, written, or practical or a combination of oral, written, or practical"; substituted language in second sentence in (2) authorizing board's discretion regarding examination for former language that read: "The examination must cover theory and practice, pharmacology and therapeutics, animal sanitation, surgery, communicable diseases, and other subjects chosen by the board which are ordinarily included in the curriculum of a school of veterinary medicine recognized and approved by the American veterinary medical association"; in (4) substituted "a passing grade, as determined by the board by rule" for "a grade of 70%"; and made minor changes in style. Amendment effective October 1, 1999.

37-18-304. Repealed. Sec. 128, Ch. 429, L. 1995.

History: En. Sec. 8, Ch. 82, L. 1913; re-en. Sec. 3224, R.C.M. 1921; re-en. Sec. 3224, R.C.M. 1935; amd. Sec. 6, Ch. 90, L. 1955; amd. Sec. 210, Ch. 350, L. 1974; R.C.M. 1947, 66-2208(2).

37-18-305. License — issuance and contents. (1) The board shall, at the conclusion of a regular examination or after investigation, if in its judgment the applicant is qualified, authorize the department to issue a license to practice veterinary medicine.

(2) Every license granted must be issued under seal and must be signed by the president and secretary-treasurer of the board and must state that the licensee has given satisfactory evidence of fitness as to age, character, veterinary medical education, and other matters required by law and that after full examination, the licensee has been found qualified to practice.

History: En. Sec. 7, Ch. 82, L. 1913; re-en. Sec. 3223, R.C.M. 1921; re-en. Sec. 3223, R.C.M. 1935; amd. Sec. 5, Ch. 90, L. 1955; amd. Sec. 209, Ch. 350, L. 1974; amd. Sec. 6, Ch. 135, L. 1975; R.C.M. 1947, 66-2207(1), (2); amd. Sec. 67, Ch. 429, L. 1995.

37-18-306. Display of license and certificate. A person may not practice veterinary medicine in this state without possessing and displaying prominently in his principal office a license and a current and valid certificate of registration issued under this part.

History: En. Sec. 8, Ch. 82, L. 1913; re-en. Sec. 3224, R.C.M. 1921; re-en. Sec. 3224, R.C.M. 1935; amd. Sec. 6, Ch. 90, L. 1955; amd. Sec. 210, Ch. 350, L. 1974; R.C.M. 1947, 66-2208(1).

37-18-307. Renewal — fee — continuing education — automatic renewal for military personnel. (1) A person licensed to practice veterinary medicine in this state shall procure a certificate of registration from the department on or before the date set by department rule. The certificate must be issued by the department on the payment of a fee fixed by the board and on presentation of evidence satisfactory to the board that the licensee qualifies for renewal.

(2) Failure of a person licensed to procure a certificate of registration on or before the date set by department rule constitutes a forfeiture of the license held by the person. A person who has forfeited the license may have it restored by making written application for restoration within 1 year of the forfeiture, setting forth the reasons for failure to procure the certificate of registration at the time specified and accompanied by payment of the registration fee provided for in this section and an additional restoration fee as the board requires. The person making application for restoration of license within 1 year of its forfeiture is not required to submit to examination.

(3) Notwithstanding any other provisions in this chapter, a person licensed who enters or is called to active duty by a branch of the armed services of the United States is entitled to receive automatic registration of the license during the period of active duty with the armed services. However, within 1 year after release or discharge from duty in the armed services the person shall procure a certificate of renewal from the department and pay the regular fee. Failure to procure the certificate of renewal within 1 year after release or discharge is the equivalent of a failure to procure a certificate of registration before the date set by department rule, and the same forfeiture and restoration requirements apply.

(4) A person licensed must at all times have the person's residence and office address on file with the department.

History: En. Sec. 7, Ch. 82, L. 1913; re-en. Sec. 3223, R.C.M. 1921; re-en. Sec. 3223, R.C.M. 1935; amd. Sec. 5, Ch. 90, L. 1955; amd. Sec. 209, Ch. 350, L. 1974; amd. Sec. 6, Ch. 135, L. 1975; R.C.M. 1947, 66-2207(3) thru (5); amd. Sec. 44, Ch. 345, L. 1981; amd. Sec. 5, Ch. 43, L. 1985; amd. Sec. 4, Ch. 650, L. 1989; amd. Sec. 68, Ch. 429, L. 1995; amd. Sec. 23, Ch. 492, L. 1997.

37-18-308. Deposit of money. Money received under this chapter shall be deposited in the state special revenue fund for the use of the board, subject to 37-1-101(6).

History: En. Sec. 3, Ch. 82, L. 1913; re-en. Sec. 3219, R.C.M. 1921; re-en. Sec. 3219, R.C.M. 1935; amd. Sec. 3, Ch. 90, L. 1955; amd. Sec. 126, Ch. 147, L. 1963; amd. Sec. 27, Ch. 177, L. 1965; amd. Sec. 26, Ch. 93, L. 1969; amd. Sec. 207, Ch. 350, L. 1974; amd. Sec. 38, Ch. 439, L. 1975; amd. Sec. 3, Ch. 531, L. 1977; R.C.M. 1947, 66-2203(3); amd. Sec. 1, Ch. 277, L. 1983.

37-18-309 and 37-18-310 reserved.

37-18-311. Repealed. Sec. 128, Ch. 429, L. 1995.

History: En. Sec. 10, Ch. 82, L. 1913; re-en. Sec. 3226, R.C.M. 1921; re-en. Sec. 3226, R.C.M. 1935; amd. Sec. 8, Ch. 90, L. 1955; amd. Sec. 212, Ch. 350, L. 1974; amd. Sec. 18, Ch. 101, L. 1977; R.C.M. 1947, 66-2210; amd. Sec. 5, Ch. 650, L. 1989.

37-18-312 reserved.

37-18-313. Municipal license fee prohibited. No license fee or license tax may be imposed upon a person who practices veterinary medicine, as a condition to the practice of his profession, by any municipality or other political subdivision of the state, including a local government with self-governing powers.

History: En. Sec. 7, Ch. 650, L. 1989.

Cross-References

General county licensing authority, Title 7, ch. 21, part 21.

Municipal licensing authority, Title 7, ch. 21, part 41.

Part 4

Licensing — Veterinary Technology (Repealed. Sec. 7, Ch. 96, L. 1981)

Part Compiler's Comments

Histories of Repealed Sections:

37-18-401. En. 66-2213 by Sec. 1, Ch. 135, L. 1975; R.C.M. 1947, 66-2213(3); amd. Sec. 3, Ch. 431, L. 1979.

37-18-402. En. 66-2213 by Sec. 1, Ch. 135, L. 1975; R.C.M. 1947, 66-2213(4), (6).

37-18-403. En. 66-2213 by Sec. 1, Ch. 135, L. 1975; R.C.M. 1947, 66-2213(5); amd. Sec. 45, Ch. 345, L. 1981.

37-18-404. En. 66-2213 by Sec. 1, Ch. 135, L. 1975; R.C.M. 1947, 66-2213(7).

37-18-405. En. 66-2213 by Sec. 1, Ch. 135, L. 1975; R.C.M. 1947, 66-2213(8), (9); amd. Sec. 46, Ch. 345, L. 1981.

37-18-406 through 37-18-410 reserved.

37-18-411. En. 66-2214 by Sec. 2, Ch. 135, L. 1975; amd. Sec. 20, Ch. 101, L. 1977; R.C.M. 1947, 66-2214.

Part 5

Remedies for Violation

Part Cross-References

Prosecutorial duties of County Attorney, 7-4-2712.

Duties of County Attorney relating to state matters, 7-4-2716.

37-18-501. Penalty. A person practicing veterinary medicine within this state, as defined in this chapter, without first having obtained a license to practice and being registered as required by this chapter or after his license to practice has been suspended or revoked or contrary to the provisions of this chapter in any manner is guilty of a misdemeanor for each violation of the provisions of this chapter or for each act relating to the practice of veterinary medicine in this state and upon conviction shall be punished by a fine of not less than $200 or more than $500, or by imprisonment in the county jail for not less than 30 days or more than 6 months, or by both such fine and imprisonment. Any person convicted a second time for any violation of this chapter shall be punished by both such fine and imprisonment. The district court has jurisdiction of all prosecutions brought hereunder.

History: En. Sec. 12, Ch. 82, L. 1913; re-en. Sec. 3228, R.C.M. 1921; re-en. Sec. 3228, R.C.M. 1935; amd. Sec. 10, Ch. 90, L. 1955; amd. Sec. 19, Ch. 101, L. 1977; R.C.M. 1947, 66-2212; amd. Sec. 5, Ch. 96, L. 1981.

37-18-502. Injunction. The board or any person may bring an action in the district court to enjoin any person who is not licensed from engaging in the practice of veterinary medicine unless otherwise exempted under 37-18-104(4). If the court finds that the defendant is violating or threatening to violate any provision of Title 37, chapter 18, it shall enter an order restraining him from the violation, without regard to any criminal provisions of Title 37, chapter 18.

History: En. 66-2215 by Sec. 3, Ch. 135, L. 1975; R.C.M. 1947, 66-2215; amd. Sec. 6, Ch. 96, L. 1981; amd. Sec. 6, Ch. 650, L. 1989.

Cross-References

Issuance of injunctions on nonjudicial days, 3-1-302, 3-5-302.

Contempts, Title 3, ch. 1, part 5.

Injunctions, Rule 65, M.R.Civ.P. (see Title 25, ch. 20); Title 27, ch. 19.

Affidavits, Title 26, ch. 1, part 10.

Disciplinary authority of boards — injunctions, 37-1-136.

CHAPTER 19

MORTICIANS AND FUNERAL DIRECTORS

Part 1 — General

37-19-101. Definitions.

Part 2 — Board of Funeral Service

37-19-201. Organization — compensation and expenses of members.
37-19-202. Meetings — quorum — rulemaking power.

Part 3 — Licensing of Morticians and Funeral Directors

37-19-301. Funeral director's license — renewal — fee.
37-19-302. License required for practice of mortuary science — qualifications of applicants.
37-19-303. Mortician's license — application fee.
37-19-304. Issuance of intern's license — license fee — issuance of mortician's license on completion of internship.
37-19-305. Repealed.
37-19-306. Renewal of mortician's license — fee — suspension for nonrenewal.
37-19-307. Deposit of money received.
37-19-308 through 37-19-310 reserved.
37-19-311. Repealed.
37-19-312. Repealed.
37-19-313 and 37-19-314 reserved.
37-19-315. Funeral costs — rules on disclosure.
37-19-316. Repealed.

Part 4 — Licensing of Mortuaries

37-19-401. License required — display of license — renewal — penalty for late renewal.
37-19-402. Operator's license requirements — facility inspections — transfer of license to new facility.
37-19-403. Power of board to set facility standards — inspection — fees.
37-19-404. Repealed.

Part 5 — Remedies for Violation

37-19-501. Penalty provision.

Part 6 reserved

Part 7 — Licensing of Crematoriums, Crematory Operators, and Crematory Technicians

37-19-701. Purpose.
37-19-702. Licenses required — display of licenses — renewal — penalty for late renewal.
37-19-703. Application — power of board to set standards — inspection — fees.
37-19-704. Cremation authorization required — identification.
37-19-705. Cremation procedures — cremation containers.
37-19-706. Disposition of cremated remains.
37-19-707. Limitation of liability.
37-19-708. Preneed cremation authorizations.

Part 8 — Perpetually Maintained Cemeteries

37-19-801. Title.
37-19-802. Purpose.
37-19-803. Application of this part — exceptions.
37-19-804 through 37-19-806 reserved.
37-19-807. Powers and duties of board.
37-19-808. Authority to inspect cemeteries and audit cemetery companies.

37-19-809 through 37-19-813 reserved.
37-19-814. Permit — application.
37-19-815. Permit — amendment.
37-19-816. Permit — transfer of ownership.
37-19-817 through 37-19-821 reserved.
37-19-822. Perpetual care and maintenance fund.
37-19-823. Records required.
37-19-824. Conveyance.
37-19-825. Preexisting cemeteries.
37-19-826. Repealed.
37-19-827. Contract for prearranged funeral plan or related services — trust requirement — interest — exception.
37-19-828. Trust fund — deposit of money.
37-19-829. Report of entity holding deposited money.
37-19-830 reserved.
37-19-831. Penalty — injunction.

Chapter Cross-References

Cadavers and autopsies, Title 50, ch. 21.

Part 1
General

37-19-101. Definitions. Unless the context requires otherwise, in this chapter, the following definitions apply:

(1) "Arrangements" includes:

(a) planning the details of funeral service, including time of service, type of service, and, if requested, acquiring the services of clergy;

(b) obtaining the necessary information for filing death certificates and obtaining burial-transit permits;

(c) comparing or discussing prices, including merchandise prices and financial arrangements; and

(d) providing for onsite direction and coordination of participants and onsite direction, coordination, and facilitation at funeral, graveside, or memorial services or rites.

(2) "At-need" arrangements means arrangements made by an authorized person on behalf of a deceased.

(3) "Authorizing agent" means a person legally entitled to order the final disposition, including burial, cremation, entombment, donation to medical science, or other means, of human remains. An authorizing agent is, in order of preference:

(a) a spouse;

(b) a majority of adult children;

(c) a parent;

(d) a close relative of the deceased; or

(e) in the absence of a person or persons listed in subsections (1)(a) through (1)(d), a personal representative, a public administrator, the deceased through a preneed authorization, or others as designated by board rule.

(4) "Board" means the board of funeral service provided for in 2-15-1853.

(5) "Branch establishment" means a separate facility that may or may not have a suitable visitation room or preparation room and that is owned by, a

subsidiary of, or otherwise financially connected to or controlled by a licensed mortuary.

(6) "Cemetery" means any land or structure in this state dedicated to and used or intended to be used for interment of cremated remains or human remains. It may be any one or a combination of a burial park for earth interments, a mausoleum for crypt or niche interments, or a columbarium.

(7) "Cemetery company" means an individual, partnership, corporation, or association that:

(a) owns or controls cemetery lands or property and conducts the business of a cemetery; or

(b) applies to the board to own or control cemetery lands or property and conduct the business of a cemetery.

(8) "Closed container" means a container in which cremated remains can be placed and enclosed in a manner that prevents leakage or spillage of cremated remains or entrance of foreign material.

(9) "Columbarium" means a room or space in a building or structure used or intended to be used for the interment of cremated remains.

(10) "Cremated remains" means all human remains recovered after the completion of the cremation, including pulverization that leaves only bone fragments reduced to unidentifiable dimensions.

(11) "Cremation" means the technical process, using heat, that reduces human remains to bone fragments. The reduction takes place through heat and evaporation.

(12) "Cremation chamber" means the enclosed space within which the cremation process takes place. Cremation chambers of crematoriums licensed by this chapter must be used exclusively for the cremation of human remains.

(13) "Cremation container" means the container in which the human remains are placed in the cremation chamber for a cremation. A cremation container must meet substantially all of the following standards:

(a) be composed of readily combustible materials suitable for cremation;

(b) be able to be closed in order to provide a complete covering for the human remains;

(c) be resistant to leakage and spillage;

(d) be rigid enough for handling with ease; and

(e) be able to provide protection for the health, safety, and integrity of crematory personnel.

(14) "Crematory" means the building or portion of a building that houses the cremation chamber and the holding facility.

(15) "Crematory operator" means the person in charge of the licensed crematory facility.

(16) "Crematory technician" means an employee of a crematory facility who is trained to perform cremations and is licensed by the board.

(17) "Crypt" means a chamber of sufficient size to inter the remains of a deceased person.

(18) "Department" means the department of commerce provided for in Title 2, chapter 15, part 18.

(19) "Embalming" means:

(a) obtaining burial or removal permits or assuming other duties incidental to the practice of embalming;

(b) disinfecting and preserving or attempting to preserve dead human bodies in their entirety or in parts by the use of chemical substances, fluids, or gasses ordinarily intended for that use by introducing the chemical substances, fluids, or gasses into the body by vascular or hypodermic injection or by direct introduction into the organs or cavities; and

(c) restorative art.

(20) "Funeral directing" includes:

(a) supervising funerals;

(b) the making of preneed or at-need contractual arrangements for funerals;

(c) preparing dead bodies for burial, other than by embalming;

(d) maintaining a mortuary for the preparation, disposition, or care of dead human bodies; and

(e) representing to the public that one is a funeral director.

(21) "Holding facility" means an area within or adjacent to the crematory facility designated for the retention of human remains prior to cremation that must:

(a) comply with any applicable public health law;

(b) preserve the dignity of the human remains;

(c) recognize the health, safety, and integrity of the crematory operator and crematory personnel; and

(d) be secure from access by anyone other than authorized personnel.

(22) "Human remains" means the body of a deceased person or part of a body or limb that has been removed from a living person, including the body, part of a body, or limb in any stage of decomposition.

(23) "Interment" means any lawful disposition of cremated remains or human remains.

(24) (a) "Intern" means a person who has met the educational and testing requirements for a license to practice mortuary science in Montana, has been licensed by the board as an intern and is engaged in the practice of mortuary science under the supervision of a licensed mortician.

(b) For the purposes of this subsection (24), "supervision" means the extent of oversight that a mortician believes an intern requires based upon the training, experience, judgment, and professional development of the intern.

(25) "Lot" or "grave space" means a space in a cemetery used or intended to be used for interment.

(26) "Mausoleum" means a community-type room or space in a building or structure used or intended to be used for the interment of human remains in crypts or niches.

(27) "Mortician" means a person licensed under this chapter to practice mortuary science.

(28) (a) "Mortuary" means a place of business licensed by the board, located in a building or portion of a building having a specific street address or location, containing but not limited to a suitable room for viewing or visitation and a preparation room, and devoted exclusively to activities that are related to the preparation and arrangements for funerals, transportation, burial, or other disposition of dead human bodies.

(b) The term includes conducting activities from the place of business referred to in subsection (28)(a) that are incidental, convenient, or related to the preparation of funeral or memorial services or rites or the transportation, burial, cremation, or other disposition of dead human bodies in any area where those activities may be conducted.

(29) "Mortuary science" means the profession or practice of funeral directing and embalming.

(30) "Niche" means a space in a columbarium or mausoleum used or intended to be used for the interment of the cremated remains or human remains of one or more deceased persons.

(31) "Perpetual care and maintenance" means continual and proper maintenance of cemetery buildings, grounds, and lots or grave spaces.

(32) "Preneed arrangements" means arrangements made with a licensed funeral director or licensed mortician by a person on the person's own behalf or by an authorized individual on the person's behalf prior to the death of the person.

(33) "Temporary container" means a receptacle for cremated remains that is usually made of cardboard, plastic film, or similar material designed to hold the cremated remains until an urn or other permanent container is acquired.

(34) "Urn" means a receptacle designed to permanently encase the cremated remains.

History: En. Sec. 1, Ch. 41, L. 1963; amd. Sec. 260, Ch. 350, L. 1974; R.C.M. 1947, 66-2701; amd. Sec. 3, Ch. 274, L. 1981; amd. Sec. 1, Ch. 298, L. 1989; amd. Sec. 3, Ch. 38, L. 1993; amd. Sec. 2, Ch. 52, L. 1997; amd. Sec. 1, Ch. 336, L. 1999.

Compiler's Comments

1999 Amendment: Chapter 336 inserted definitions of arrangements, at-need, branch establishment, intern, and preneed arrangements; in definition of authorizing agent after "order" substituted "the final disposition, including burial, cremation, entombment, donation to medical science, or other means" for "the cremation"; substituted definition of embalming for former language that read: "means the preservation and disinfection of the dead human body by application of chemicals, externally, internally, or both"; substituted definition of mortuary for former language that read: "means the place of business used for the care and preparation for burial or transportation of dead human bodies or a place where a person represents that the person is engaged in the profession of mortuary science or funeral directing"; and made minor changes in style. Amendment effective October 1, 1999.

Part 2

Board of Funeral Service

Part Cross-References

Right to know, Art. II, sec. 9, Mont. Const.

Open meetings, Title 2, ch. 3, part 2.

Meeting defined, 2-3-202.

Adoption and publication of rules, Title 2, ch. 4, part 3.

Allocation of boards for administrative purposes, 2-15-121.

Quasi-judicial boards, 2-15-124.

Board established, 2-15-1853.

Duties of Department, Director, and boards, Title 37, ch. 1, part 1.

Disrupting meeting as disorderly conduct, 45-8-101.

37-19-201. Organization — compensation and expenses of members. The board shall elect a chairman, secretary-treasurer, and other necessary officers. Board members are entitled to receive compensation and travel expenses as provided for in 37-1-133.

History: En. Sec. 3, Ch. 41, L. 1963; amd. Sec. 262, Ch. 350, L. 1974; amd. Sec. 42, Ch. 439, L. 1975; amd. Sec. 4, Ch. 531, L. 1977; R.C.M. 1947, 66-2703; amd. Sec. 23, Ch. 474, L. 1981.

37-19-202. Meetings — quorum — rulemaking power. The board shall hold such meetings as may be necessary. Three members constitute a quorum for the transaction of business. The board may adopt and enforce rules to carry out the purposes of this chapter.

History: En. Sec. 4, Ch. 41, L. 1963; R.C.M. 1947, 66-2704.

Part 3

Licensing of Morticians and Funeral Directors

Part Cross-References

Licensing to follow contested case procedure, 2-4-631.

Suspension of license fees for persons in military service, 10-1-605.

Duty of Department to administer and grade examinations, 37-1-101.

Duty of Board to adopt and enforce licensing and certification rules, 37-1-131.

Licensing boards to establish fees commensurate with costs, 37-1-134.

Licensing investigation and review — record access, 37-1-135.

Grounds for disciplinary action as grounds for license denial — conditions to new licenses, 37-1-137.

Licensure of criminal offenders, Title 37, ch. 1, part 2.

Nondiscrimination in licensing, 49-3-204.

37-19-301. Funeral director's license — renewal — fee. The practice of funeral directing by anyone who does not hold a funeral director's license or a mortician's license issued by the department is prohibited. A person licensed to practice funeral directing is entitled to the renewal of the license on payment of a renewal fee to the department on or before the date set by department rule. The amount of the renewal license fee must be set by the board.

History: En. Sec. 7, Ch. 41, L. 1963; amd. Sec. 264, Ch. 350, L. 1974; amd. Sec. 11, Ch. 215, L. 1975; R.C.M. 1947, 66-2707; amd. Sec. 47, Ch. 345, L. 1981; amd. Sec. 69, Ch. 429, L. 1995; amd. Sec. 24, Ch. 492, L. 1997.

37-19-302. License required for practice of mortuary science — qualifications of applicants. (1) The practice of embalming or mortuary science by anyone who does not hold a mortician's license issued by the board is prohibited. A person 18 years of age or older wishing to practice mortuary science in this state must apply to the board on the form and in the manner prescribed by the board.

(2) To qualify for a mortician's license, a person must:

(a) be of good moral character;

(b) present evidence of having satisfactorily completed 90 quarter credits or the equivalent of study at an accredited college or university;

(c) in addition to the 90 quarter credits or the equivalent of study required in subsection (2)(b), have graduated with a diploma from an accredited college of mortuary science;

(d) pass an examination prescribed by the board; and

(e) serve a 1-year internship under the supervision of a licensed mortician in a licensed mortuary in Montana after passing the examination provided for in subsection (2)(d).

(3) A person who fails the examination required in subsection (2)(d) may retake it under conditions prescribed by rule of the board.

History: En. Sec. 8, Ch. 41, L. 1963; amd. Sec. 9, Ch. 168, L. 1971; amd. Sec. 265, Ch. 350, L. 1974; R.C.M. 1947, 66-2708; amd. Sec. 4, Ch. 378, L. 1981; amd. Sec. 1, Ch. 510, L. 1985.

37-19-303. Mortician's license — application fee. A person possessing the necessary qualifications may apply to the department for a license and on payment of an application fee, as set by the board, may take the examination prescribed by the board. The examination shall be held on the second Wednesday of July each year in Helena and at such other times and places as the board considers necessary.

History: En. Sec. 9, Ch. 41, L. 1963; amd. Sec. 266, Ch. 350, L. 1974; amd. Sec. 12, Ch. 215, L. 1975; R.C.M. 1947, 66-2709; amd. Sec. 48, Ch. 345, L. 1981.

37-19-304. Issuance of intern's license — license fee — issuance of mortician's license on completion of internship. An applicant who passes the examination provided for in 37-19-302 shall, upon payment of a license fee prescribed by the board, be granted an intern mortician's license to practice mortuary science under the supervision of a licensed mortician in a licensed mortuary in Montana and, upon completion of 1 year's internship and payment of the license fee, may apply for and receive a mortician's license.

History: En. Sec. 10, Ch. 41, L. 1963; R.C.M. 1947, 66-2710; amd. Sec. 49, Ch. 345, L. 1981; amd. Sec. 2, Ch. 510, L. 1985; amd. Sec. 25, Ch. 492, L. 1997.

37-19-305. Repealed. Sec. 128, Ch. 429, L. 1995.

History: En. Sec. 12, Ch. 41, L. 1963; R.C.M. 1947, 66-2712; amd. Sec. 5, Ch. 378, L. 1981.

37-19-306. Renewal of mortician's license — fee — suspension for nonrenewal. (1) The license fee for a mortician's license must be postmarked on or before the date set by department rule. The amount of the renewal fee must be set by the board.

(2) Failure to pay the renewal fee results in automatic suspension of the license. The license may be reinstated by the payment of unpaid renewal fees plus a penalty prescribed by the board.

History: En. Sec. 11, Ch. 41, L. 1963; amd. Sec. 267, Ch. 350, L. 1974; amd. Sec. 13, Ch. 215, L. 1975; R.C.M. 1974, 66-2711; amd. Sec. 50, Ch. 345, L. 1981; amd. Sec. 70, Ch. 429, L. 1995; amd. Sec. 26, Ch. 492, L. 1997.

37-19-307. Deposit of money received. Money collected by the department under this chapter shall be deposited for the use of the board, subject to 37-1-101(6).

History: En. Sec. 6, Ch. 41, L. 1963; amd. Sec. 263, Ch. 350, L. 1974; R.C.M. 1947, 66-2706.

37-19-308 through 37-19-310 reserved.

37-19-311. Repealed. Sec. 128, Ch. 429, L. 1995.

History: En. Sec. 14, Ch. 41, L. 1963; R.C.M. 1947, 66-2714; amd. Sec. 6, Ch. 378, L. 1981; amd. Sec. 3, Ch. 510, L. 1985; amd. Sec. 2, Ch. 298, L. 1989.

37-19-312. Repealed. Sec. 128, Ch. 429, L. 1995.

History: En. Sec. 15, Ch. 41, L. 1963; amd. Sec. 268, Ch. 350, L. 1974; R.C.M. 1947, 66-2715.

37-19-313 and 37-19-314 reserved.

37-19-315. Funeral costs — rules on disclosure. The board shall adopt rules requiring mortuaries to disclose in writing to all customers a complete itemized list of all funeral costs and complete information regarding the need for embalming.

History: En. Sec. 7, Ch. 378, L. 1981.

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

37-19-316. Repealed. Sec. 128, Ch. 429, L. 1995.

History: En. Sec. 8, Ch. 378, L. 1981.

Part 4
Licensing of Mortuaries

Part Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

Licensing to follow contested case procedure, 2-4-631.

Prohibited relations with mortuaries, 33-18-301.

Duty of Board to adopt and enforce licensing and certification rules, 37-1-131.

Licensing boards to establish fees commensurate with costs, 37-1-134.

Licensure of criminal offenders, Title 37, ch. 1, part 2.

Nondiscrimination in licensing, 49-3-204.

37-19-401. License required — display of license — renewal — penalty for late renewal. (1) An operating mortuary must be licensed by the board. The license must be displayed in a conspicuous place.

(2) A mortuary license expires on the date set by department rule and may be renewed upon payment of a fee set by the board.

(3) The board may set a penalty for late renewal of a mortuary license.

History: En. Sec. 13, Ch. 41, L. 1963; R.C.M. 1947, 66-2713(part); amd. Sec. 3, Ch. 298, L. 1989; amd. Sec. 71, Ch. 429, L. 1995.

37-19-402. Operator's license requirements — facility inspections — transfer of license to new facility. (1) The operation of a mortuary is prohibited by anyone not holding a mortician's or funeral director's license.

(2) A license to operate a new mortuary facility in Montana may be issued only if the proposed mortuary facility meets standards for operating mortuaries adopted by the board.

(3) (a) An applicant for a license to operate a new mortuary shall send to the department a written and verified application on a form prescribed by the board. The application must be accompanied by an initial inspection fee.

(b) The department shall inspect the proposed new mortuary and report its findings to the board.

(4) The board shall grant a license if the department determines that the proposed new facility meets the standards adopted by the board and will be operated by a person who has been issued a mortician's or a funeral director's license.

(5) The board may grant a temporary license to a mortuary until the initial inspection is completed.

(6) A mortuary license may be transferred from one facility to another only when the proprietor of a licensed facility terminates services at the licensed facility and commences services at a new facility. The new facility must be inspected and must meet standards for operating mortuaries.

(7) A mortuary may be inspected by members of the board or their representatives during business hours.

History: En. Sec. 13, Ch. 41, L. 1963; R.C.M. 1947, 66-2713(4); amd. Sec. 4, Ch. 298, L. 1989.

37-19-403. Power of board to set facility standards — inspection — fees. (1) The board may adopt rules prescribing reasonable standards for operating mortuaries, including minimum requirements for drainage, ventilation, and instruments. The board may inspect the premises of a mortuary establishment to determine if rules are complied with. Inspections are at the discretion of the board and may be without notice. An initial inspection is mandatory.

(2) The board may charge the operator an inspection fee, including an initial inspection fee, to be set at the discretion of the board. Fees must be commensurate with costs.

History: En. Sec. 13, Ch. 41, L. 1963; R.C.M. 1947, 66-2713(part); amd. Sec. 51, Ch. 345, L. 1981; amd. Sec. 5, Ch. 298, L. 1989.

37-19-404. Repealed. Sec. 128, Ch. 429, L. 1995.

History: En. Sec. 13, Ch. 41, L. 1963; R.C.M. 1947, 66-2713(3); amd. Sec. 6, Ch. 298, L. 1989.

Part 5

Remedies for Violation

37-19-501. Penalty provision. A person who violates this chapter is guilty of a misdemeanor.

History: En. Sec. 17, Ch. 41, L. 1963; R.C.M. 1947, 66-2717.

Cross-References

Criminal responsibility and accountability of corporations, 45-2-311, 45-2-312.

Misdemeanor penalty when none specified, 46-18-212.

Part 6 reserved

Part 7

Licensing of Crematoriums, Crematory Operators, and Crematory Technicians

37-19-701. Purpose. The legislature finds that because the practice of crematory operation affects the lives of the people of this state and because some Montanans may exercise their right to choose cremation for themselves or a loved one, it is the purpose of this part to:

(1) provide standards for the licensing and regulation of crematoriums in order to protect the public health, safety, and welfare; and

(2) ensure the qualified and professional practice of crematory operation.

History: En. Sec. 1, Ch. 38, L. 1993.

37-19-702. Licenses required — display of licenses — renewal — penalty for late renewal. (1) A person doing business in this state or a cemetery, mortuary, corporation, partnership, joint venture, voluntary organization, or other entity that erects, maintains, or provides the necessary appliances and facilities for the cremation of human remains and that conducts cremations must be licensed by the board, beginning July 1, 1993. The license must be displayed in a conspicuous place in the crematory facility.

(2) A crematory license expires on the date set by department rule and may be renewed upon payment of a fee set by the board, which includes the

cost of annual inspection. If a crematory facility is attached to a licensed mortuary, only one inspection fee may be charged for inspection of both a mortuary facility under 37-19-403 and a crematory facility.

(3) The board may set a penalty fee for late renewal of a license.

(4) A person in charge of a licensed crematory facility must be licensed as a crematory operator by the board. A person employed by a licensed crematory facility must be licensed as a crematory technician by the board. The license must be displayed in a conspicuous place in the crematory facility.

(5) Crematory operator and crematory technician licenses expire on the date set by department rule and may be renewed upon payment of a fee set by the board. On-the-job training must be provided to a crematory technician at the time of employment.

History: En. Sec. 4, Ch. 38, L. 1993; amd. Sec. 72, Ch. 429, L. 1995.

37-19-703. Application — power of board to set standards — inspection — fees. (1) Application for a crematory, crematory operator, or crematory technician license must be on forms prescribed by the board and must include the name of the applicant, name of the crematory facility, location of the crematory facility and its mailing address, and any further information the board requires. To be eligible for licensure:

(a) as a crematory facility, an application must include a description of the type of structure and equipment to be used in the operation of the crematory facility;

(b) as a crematory operator, an applicant must be at least 18 years of age, must be a high school graduate or have an equivalent degree, and must be of good moral character.

(2) The application must be accompanied by an application fee set by the board.

(3) The board must be notified of any change of ownership of a crematory within 30 days of the change.

(4) A license to operate a crematory in Montana may be issued only upon inspection of the crematory facility and upon a finding of compliance with standards for operation set by the board.

(5) A temporary permit may be issued to operate a crematory facility, as prescribed by board rule, that is effective until the initial inspection is completed to the board's satisfaction.

(6) A crematory facility may be inspected by a board member or the board's designated representative during business hours.

(7) The board shall adopt rules governing the cremation of human remains, the transportation of human remains, sanitation, equipment, fire protection, building construction, and recordkeeping.

(8) A crematory facility shall comply with all local building codes, environmental standards, and applicable state and local regulations.

(9) A new crematory facility shall pay an initial inspection fee, set by the board, that must accompany the application.

History: En. Sec. 5, Ch. 38, L. 1993.

37-19-704. Cremation authorization required — identification. (1) Except as otherwise provided in this chapter, a crematory may not cremate human remains until it has received a cremation authorization.

(2) A crematory may not accept unidentified human remains.

(3) Appropriate identification must be placed upon the exterior of the cremation container upon receipt of the human remains.

History: En. Sec. 6, Ch. 38, L. 1993.

37-19-705. Cremation procedures — cremation containers. (1) Human remains may not be cremated except in a licensed crematory.

(2) Human remains may not be cremated within 24 hours after the time of death.

(3) A body may not be cremated with a pacemaker or other potentially hazardous implant, as defined by the board, including any toxic or explosive-type sealed implants, in place. The authorizing agent is responsible for disclosing the existence of any pacemakers or other hazardous implants.

(4) A crematory shall hold human remains, prior to their cremation, under the following conditions:

(a) In the event the crematory is unable to perform cremation upon receipt of the human remains, it shall place the human remains in a holding facility.

(b) If the human remains are not embalmed, they may not be held longer than 48 hours after the time of death outside of a refrigerated facility.

(5) Human remains delivered to a crematory may not be removed from the cremation container, and the cremation container must be cremated with the human remains.

(6) Unauthorized persons may not be permitted in the retort area while any human remains are awaiting cremation, being cremated, or being removed from the cremation chamber.

(7) The unauthorized, simultaneous cremation of human remains of more than one person within the same cremation chamber is prohibited unless the crematory has received express written authorization from all appropriate authorizing agents for the human remains to be cremated simultaneously. A written authorization exempts the crematory from liability for commingling of the product of the cremation process provided the authorization is complied with.

(8) The identification of the human remains, as indicated on the cremation container, must be verified by the crematory operator or crematory technician immediately prior to the cremation container being placed within the cremation chamber. The identification must be removed from the cremation container and be placed near the cremation chamber control panel where it must remain until the cremation process is complete.

(9) Upon completion of the cremation process, all recoverable residue must be removed from the cremation chamber. All residue of the cremation process must be separated from material other than bone fragments, which must be processed so as to reduce the bone fragments to unidentifiable particles.

(10) Cremated remains, with proper identification, must be packed and placed in a temporary container or urn ordered by the authorizing agent.

(11) If the cremated remains will not fit within the dimensions of the temporary container or urn, the remainder of the cremated remains must be returned to the authorizing agent in a separate container.

(12) If the cremated remains are to be shipped, the temporary container or designated receptacle ordered by the authorizing agent must be packed securely in a suitable, sturdy, pressure resistant, and properly sealed container.

(13) Cremated remains may be shipped only by a method that has an internal tracing system available and that provides a receipt signed by the person accepting delivery.

History: En. Sec. 7, Ch. 38, L. 1993.

37-19-706. Disposition of cremated remains. (1) The person arranging the cremation shall require the authorizing agent to provide a signed statement that specifies the ultimate disposition of the cremated remains, if known.

(2) The authorizing agent is responsible for specifying the disposition of the cremated remains. If, after a period of 90 days from the date of cremation, the authorizing agent has not specified the ultimate disposition or claimed the cremated remains, the crematory or person in possession of the cremated remains is responsible for disposition of the cremated remains and may then dispose of the cremated remains in any manner permitted by law. A record of the disposition must be made and kept by the crematory operator. This subsection applies to all cremated remains in the possession of a crematory or other party.

(3) Except with the express written consent of the authorizing agent, a person may not:

(a) dispose of or scatter cremated remains in a manner or in a location that commingles the cremated remains with those of another person. The provisions of this subsection (3) do not apply to the scattering of cremated remains from individual containers over public waterways or by air or to the scattering of cremated remains in an area located in a dedicated cemetery and used exclusively for that purpose.

(b) place cremated remains of more than one person in the same closed container.

(4) Cremated remains must be delivered to the individual specified by the authorizing agent on the cremation authorization form.

(5) A representative of the crematory and the individual receiving the cremated remains shall sign a receipt indicating the name of the deceased and the date, time, and place of the delivery. The crematory shall retain a copy of the receipt, and the original must be given to the authorizing agent. After this delivery, the cremated remains may be transported, in this state, without a permit and disposed of in accordance with this chapter.

History: En. Sec. 8, Ch. 38, L. 1993.

37-19-707. Limitation of liability. (1) A person signing a cremation authorization form shall warrant the truthfulness of any facts set forth in the form, including the identity of the deceased whose remains are to be cremated and the signer's authority to order cremation.

(2) A crematory, crematory operator, or crematory technician who properly cremates human remains, refuses to accept a body or perform a cremation, or refuses to release cremated remains due to an unresolved dispute is presumed to have acted properly and without negligence if the actions were performed in accordance with Title 37, chapter 19.

History: **En. Sec. 9, Ch. 38, L. 1993.**

37-19-708. Preneed cremation authorizations. (1) Preneed cremation authorizations may be made with a cemetery, funeral establishment, crematory, or any other party. Preneed authorizations must specify the ultimate disposition of the cremated remains, be signed by the authorizing agent, and meet other requirements established by board rule.

(2) A crematory operator or crematory technician shall comply with the terms of the preneed authorization in releasing or disposing of the cremated remains at the time of death.

(3) Upon payment for cremation and disposition, a crematory, crematory operator, or crematory technician in possession of a cremation authorization form and the deceased's human remains is not liable for the actual cremation and the disposition of the cremated remains if the terms of the preneed authorization have been complied with.

History: **En. Sec. 10, Ch. 38, L. 1993.**

Part 8

Perpetually Maintained Cemeteries

Part Cross-References

Funeral plan trusts, Title 72, ch. 37, part 1.

37-19-801. Title. This part may be referred to as the "Perpetually Maintained Cemeteries Act".

History: **En. Sec. 3, Ch. 52, L. 1997.**

37-19-802. Purpose. The legislature declares that it is the public policy of this state to regulate privately owned, for-profit cemeteries to protect public health and promote financial stability through perpetual care and maintenance trusts.

History: **En. Sec. 4, Ch. 52, L. 1997.**

37-19-803. Application of this part — exceptions. This part applies to all cemeteries and burial grounds located in the state of Montana unless the cemetery is owned and operated by:

(1) a church or similar religious organization;

(2) a municipality or county government;

(3) a family, as a private family burial ground where lots are not offered for sale; or

(4) a community nonprofit association in which persons other than the bookkeeper and maintenance crew are not entitled to receive any pecuniary profit.

History: **En. Sec. 5, Ch. 52, L. 1997.**

37-19-804 through 37-19-806 reserved.

37-19-807. Powers and duties of board. The board is charged with administering this part. The board may:

(1) conduct reasonable periodic, special, or other examinations of a cemetery or cemetery company, including but not limited to an examination of the physical condition or appearance of the cemetery, an audit of the financial condition of the cemetery company and any trust funds maintained by the cemetery company, and any other examinations the board considers necessary

or appropriate in the public interest. The board may also order examinations in response to public complaints. The examinations must be made by members or representatives of the board that may include a certified or registered public accountant or any other person designated by the board.

(2) issue or amend permits to operate a cemetery in accordance with the provisions of this part;

(3) adopt rules and forms to enforce the provisions of this part;

(4) require a cemetery company to observe minimum accounting principles and practices and to keep books and records in accordance with the principles and practices for the period of time the board may by rule prescribe; and

(5) require a cemetery company to provide additional contributions to the perpetual care and maintenance fund of the cemetery as provided for in this part, including but not limited to contributions not to exceed $1,000 whenever a cemetery company fails to properly care for, maintain, or preserve a cemetery.

History: En. Sec. 6, Ch. 52, L. 1997.

Cross-References

Board of funeral service, 2-15-1853.

37-19-808. Authority to inspect cemeteries and audit cemetery companies. (1) The board may order an inspection of a cemetery or may audit a cemetery company. For each cemetery examined or cemetery company audited in accordance with this part, the cemetery company shall pay to the board a fee for each examination or audit as the board prescribes by rule. When an examination is ordered by the board, the cemetery company shall pay, at the state per diem rate, travel expenses, meals, and lodging for each day that a member of the board or an authorized examiner spends in examining the physical condition or appearance of a cemetery. Once audited, a cemetery company may not be required to submit to an audit at the request of the board for a period of 5 years unless complaints have resulted in a formal notice of disciplinary action by the department against the cemetery company.

(2) (a) In lieu of any financial examination that the board is authorized to make, the board may accept the audit of an independent certified or registered public accountant if the board has notified the cemetery company that the audit would be acceptable and the cemetery company has notified the board in writing that the audit will be prepared.

(b) The costs of the audit provided for in subsection (2)(a) must be borne by the cemetery company, and the scope of the audit must be at least equal to the scope of the examination required by the board.

History: En. Sec. 7, Ch. 52, L. 1997.

37-19-809 through 37-19-813 reserved.

37-19-814. Permit — application. (1) By January 1, 1998, a person operating a cemetery or a cemetery company governed by this part must have a permit issued by the board. The permit must be displayed in a conspicuous place at the cemetery.

(2) A cemetery permit expires on the date set by board rule and may be renewed for a 5-year period upon payment of a fee set by the board. An application for a permit or renewal of a permit must designate a responsible person, including that person's address and telephone number, who is available

to act on behalf of the cemetery company with regard to the requirements of this part. A cemetery company may designate a different person with board approval. An application for renewal of a permit must contain:

(a) the name of the cemetery company, the location of the cemetery, the name of the person in charge of the records of the cemetery company, and the telephone number of the cemetery company;

(b) the number and dollar amount of sales of cemetery lots, grave spaces, mausoleums, crypts, niches, and burial rights for which payment has been made in full and the number of certificates or deeds of conveyance issued during the preceding 5 calendar years;

(c) an accounting of the amounts paid into the perpetual care and maintenance fund and the income received from the fund during the preceding 5 calendar or fiscal years, including the total amount due to the fund whether paid in or not, the amount due to the fund at the date of the report, and the amount expended for maintenance of the cemetery;

(d) the names and addresses of the owners of the cemetery company or the officers and directors of the cemetery company, any change in control of the cemetery company that has occurred during the past 5 calendar or fiscal years, the date of incorporation, if applicable, and the resident agent and address of the registered agent's office if the cemetery company is a corporation; and

(e) any other information that the board requires by rule.

(3) The board may set a penalty fee for late renewal of a permit.

History: En. Sec. 8, Ch. 52, L. 1997.

37-19-815. Permit — amendment. (1) Whenever a cemetery company that is subject to the provisions of this part proposes to amend its present permit for construction of a mausoleum, reduction or increase in percentage of gross sales proceeds to be placed in the perpetual care and maintenance fund, expansion of a cemetery, or other changes in its operation, the cemetery company shall file an application for amendment of the permit with the board.

(2) The application must be accompanied by a fee and other information that the board requires by rule.

History: En. Sec. 9, Ch. 52, L. 1997.

37-19-816. Permit — transfer of ownership. (1) If a cemetery company that is subject to the provisions of this part is to be sold, if the ownership is to be otherwise transferred, or if a controlling interest in the company is to be sold or otherwise transferred, the proposed purchaser or transferee shall file an application for the issuance of a new permit with the board.

(2) The application must be accompanied by a fee and other information that the board requires by rule.

History: En. Sec. 10, Ch. 52, L. 1997.

37-19-817 through 37-19-821 reserved.

37-19-822. Perpetual care and maintenance fund. (1) A perpetual care and maintenance fund established pursuant to the provisions of this part for the purpose of administration, care, and maintenance of a cemetery, including lots, grave spaces, crypts, niches, burial rights, or other land or buildings, is a trust fund.

(2) The net income from the fund must be used by the owners, managers, or officers and directors of a cemetery company exclusively for the care and maintenance of the cemetery and may not be used for any other purpose.

(3) The principal of a perpetual care and maintenance fund must in all cases remain intact and inviolate and must be administered with the same care, skill, prudence, and diligence, under the circumstances then prevailing, that a prudent person would use to accomplish the purpose of the trust as required by this section and reflected in the trust document.

(4) Each cemetery company shall maintain at a minimum the following:

(a) a general ledger and general journal or comparable books of entry showing all receipts, disbursements, assets, liabilities, and income of the perpetual care and maintenance fund;

(b) documents supporting and verifying each asset of the fund; and

(c) a trust agreement.

(5) The board may require a cemetery company to provide an accounting or audit of its perpetual care and maintenance fund.

(6) Each cemetery company shall deposit not less than 15% of the gross proceeds of each sale of a lot, grave space, crypt, niche, or burial right, as determined by the board, into the perpetual care and maintenance fund.

(7) In establishing a perpetual care and maintenance fund, a cemetery company may from time to time adopt plans for the general care and maintenance of its cemetery.

(8) A perpetual care and maintenance fund may receive, take, and hold any real or personal property that is bequeathed, devised, granted, given, or otherwise contributed to it.

History: En. Sec. 11, Ch. 52, L. 1997.

37-19-823. Records required. (1) A cemetery company shall make and keep accounts and records confirming that it has made the required contributions to its perpetual care and maintenance fund. The burden is upon the cemetery company to maintain the accounts and records.

(2) All sales contracts and deeds, unless otherwise authorized by the board, issued by a cemetery company must be numbered prior to their execution by the cemetery company and must contain those items the board prescribes by rule.

History: En. Sec. 12, Ch. 52, L. 1997.

37-19-824. Conveyance. (1) An instrument of conveyance for a lot, grave space, mausoleum, crypt, niche, or burial right or part of a lot or grave space must be issued to the purchaser upon complete payment of the purchase price.

(2) Only a cemetery company or its agents may sell or convey the items listed in subsection (1). However, an owner may sell the item if the owner has first offered in writing to sell it to the cemetery company at the purchase price then being charged by the cemetery company for a similar item and the cemetery company has not accepted the offer within 30 days of the offer.

(3) (a) The secretary or other responsible person of a cemetery company shall file and record in the cemetery company's books all instruments of conveyance.

(b) An instrument of conveyance must be recorded by the cemetery company in the office of the county clerk and recorder and returned to the purchaser.

(4) An instrument of conveyance must be signed on behalf of a cemetery company by the person having proper authority to sign the instrument of conveyance.

History: En. Sec. 13, Ch. 52, L. 1997; amd. Sec. 2, Ch. 336, L. 1999.

Compiler's Comments

1999 Amendment: Chapter 336 near beginning in (1) and twice in (4) after "conveyance" deleted "or deed"; at end of (3)(a) after "conveyance" deleted "and deeds"; inserted (3)(b) requiring conveyance instrument to be recorded and returned to purchaser; and made minor changes in style. Amendment effective October 1, 1999.

37-19-825. Preexisting cemeteries. A cemetery or cemetery company that is in existence on January 1, 1998, shall obtain the necessary permits required by this part in order to continue operation and is subject as of January 1, 1998, to the provisions of this part.

History: En. Sec. 14, Ch. 52, L. 1997.

37-19-826. Repealed. Sec. 6, Ch. 336, L. 1999.

History: En. Sec. 15, Ch. 52, L. 1997.

37-19-827. Contract for prearranged funeral plan or related services — trust requirement — interest — exception. (1) Prearranged funeral or related services may be presented, negotiated, and sold to the public only by a licensed funeral director or licensed mortician.

(2) Except as provided in subsection (4), all money paid pursuant to a contract for a prearranged funeral or related services must be held in trust for the purposes for which it was furnished until the obligations of a funeral director, embalmer, cemetery firm, or mausoleum-columbarium corporation have been fulfilled according to the terms of the contract or, by mutual consent of the parties, until the money is refunded to the proper party.

(3) Any interest accrued by money in a trust must be held in the trust and is subject to the terms of the trust agreement.

(4) Money paid for the purchase of a lot, grave space, mausoleum, crypt, niche, or burial right or part of a lot or grave space is not subject to the trust requirements of this section if title passes to the purchaser at the time that the payment is made.

History: En. Sec. 3, Ch. 336, L. 1999.

Compiler's Comments

Effective Date: This section is effective October 1, 1999.

37-19-828. Trust fund — deposit of money. (1) (a) A party that provides services pursuant to a contract for a prearranged funeral or related services and that receives money under the contract shall deposit the money within 3 business days of receipt in a banking institution or invest the money in the stock of a savings or building and loan association or in the shares of a credit union.

(b) The banking institution, savings or building and loan association, or credit union must have its principal place of business in this state and must be organized under the laws of this state or of the United States.

(c) Deposits or investments made as provided in this section must be insured by an instrumentality of the federal government.

(2) Deposits or investments made pursuant to this section constitute a trust fund for the benefit of the person contracting for the prearranged funeral or related services. The money must be placed in a separate account in the name of the depositor as trustee for the person contracting for the prearranged funeral or related services.

History: En. Sec. 4, Ch. 336, L. 1999.

Compiler's Comments

Effective Date: This section is effective October 1, 1999.

37-19-829. Report of entity holding deposited money. A banking institution, savings or building and loan association, or credit union shall report to the department prior to February 1 of each year all amounts that it has received and held in trust accounts created as provided in 37-19-828. The report must contain the name and address of each trustee and trust beneficiary and must contain the amount of principal in each account and the amount of interest or dividends paid on each account.

History: En. Sec. 5, Ch. 336, L. 1999.

Compiler's Comments

Effective Date: This section is effective October 1, 1999.

37-19-830 reserved.

37-19-831. Penalty — injunction. (1) A person who violates a provision of this part is guilty of a misdemeanor and upon conviction shall be fined not more than $500 or imprisoned for not more than 90 days, or both.

(2) The board may enforce any provision of this part by injunction or any other appropriate proceeding.

History: En. Sec. 16, Ch. 52, L. 1997.

CHAPTER 20

PHYSICIAN ASSISTANTS-CERTIFIED

Part 1 — General

37-20-101. Qualifications of supervising physician and physician assistant-certified.
37-20-102. Repealed.
37-20-103. Limitations on authority conferred — exception.
37-20-104. Title and practice.

Part 2 — Board of Medical Examiners

37-20-201. Duties of board of medical examiners — compensation and expenses of members.
37-20-202. Adoption of rules.
37-20-203. Licensing of physician assistants-certified.

Part 3 — Utilization Plans

37-20-301. Utilization plan required — contents — approval.
37-20-302. Utilization plan approval fee — renewal of license — renewal fee.
37-20-303. Exemptions from approval requirement.

Part 4 — Regulation of Practice

37-20-401. Definitions.
37-20-402. Criteria for licensing a physician assistant-certified.
37-20-403. Physician assistant-certified as agent of supervising physician.
37-20-404. Prescribing and dispensing authority — discretion of supervising physician on limitation of authority.
37-20-405. Billing.
37-20-406. Liaison to board.
37-20-407 and 37-20-408 reserved.
37-20-409. Repealed.

Chapter Cross-References

Limits on liability for emergency care rendered at scene of accident or emergency, 27-1-714.

General provisions relating to health care practitioners, Title 37, ch. 2.

Report of fetal death that occurs outside licensed medical facility, 46-4-114.

Emergency medical services, Title 50, ch. 6.

Health care information, Title 50, ch. 16.

Abortion restricted to licensed physician, 50-20-109.

Duty of physician assistant-certified to report violations of Montana Elder and Persons with Developmental Disabilities Abuse Prevention Act, 52-3-811.

Part 1
General

Part Cross-References

Licensing investigation and review — record access, 37-1-135.

Grounds for disciplinary action as grounds for license denial — conditions to new licenses, 37-1-137.

Licensure of criminal offenders, Title 37, ch. 1, part 2.

Licensing of physicians, Title 37, ch. 3, part 3.

Unsworn falsification to authorities, 45-7-203.

Nondiscrimination in licensing, 49-3-204.

37-20-101. Qualifications of supervising physician and physician assistant-certified. (1) Each supervising physician named in the utilization plan required by 37-20-301 shall:

(a) possess a current, unrestricted license to practice medicine in this state;

(b) submit a statement to the Montana state board of medical examiners that, in his opinion, the physician assistant-certified to be employed is of good character and is both mentally and physically able to perform the duties of a physician assistant-certified described in the utilization plan;

(c) submit a statement to the board that he will exercise supervision over the physician assistant-certified in accordance with any rules adopted by the board and will retain professional and legal responsibility for the care and treatment of his patients; and

(d) submit detailed information to the board regarding the physician's professional background, medical education, internship and residency, continuing education received, membership in state and national medical associations, hospital and staff privileges, and such other information as the board may require.

(2) Each physician assistant-certified named in the utilization plan required by 37-20-301 shall meet the criteria for approval as a physician assistant-certified as provided in 37-20-402.

History: En. Sec. 3, Ch. 380, L. 1981; amd. Sec. 9, Ch. 97, L. 1989.

37-20-102. Repealed. Sec. 16, Ch. 419, L. 1993.
History: En. Sec. 8, Ch. 380, L. 1981; amd. Sec. 10, Ch. 97, L. 1989.

37-20-103. Limitations on authority conferred — exception. Except as provided in 37-10-102, nothing in this chapter may be construed to authorize a physician assistant-certified to perform those functions and duties specifically delegated by law to persons licensed as optometrists, as defined under Title 37, chapter 10. A physician assistant-certified may not perform an abortion.
History: En. Sec. 10, Ch. 380, L. 1981; amd. Sec. 11, Ch. 97, L. 1989; amd. Sec. 1, Ch. 321, L. 1995.

37-20-104. Title and practice. (1) A person who employs a physician assistant-certified or holds out to the public that the person is a physician assistant-certified without the approval of the Montana state board of medical examiners is guilty of a misdemeanor and is punishable as provided in 46-18-212.

(2) Prior to being issued a license and receiving approval of a utilization plan, a physician assistant-certified may not engage in the practice of medicine in this state, even under the supervision of a licensed physician.

(3) The board may enforce the provisions of this section by the remedy of injunction.
History: En. Sec. 5, Ch. 380, L. 1981; amd. Sec. 12, Ch. 97, L. 1989; amd. Sec. 1, Ch. 446, L. 1991; amd. Sec. 7, Ch. 419, L. 1993.

Cross-References

Issuance of injunctions on nonjudicial days, 3-1-302, 3-5-302.

Contempts, Title 3, ch. 1, part 5.

Injunctions, Rule 65, M.R.Civ.P. (see Title 25, ch. 20); Title 27, ch. 19.

Affidavits, Title 26, ch. 1, part 10.

Reporting disciplinary actions against licensees, 37-1-105.

Disciplinary authority of boards — injunctions, 37-1-136.

Criminal responsibility and accountability of corporations,45-2-311, 45-2-312.

Part 2

Board of Medical Examiners

Part Cross-References

Allocation of boards for administrative purposes, 2-15-121.

Quasi-judicial boards, 2-15-124.

Board established, 2-15-1841.

Duties of Department, Director, and boards, Title 37, ch. 1, part 1.

Board of Medical Examiners, Title 37, ch. 3, part 2.

37-20-201. Duties of board of medical examiners — compensation and expenses of members. The Montana state board of medical examiners provided for in 2-15-1841 shall administer the provisions of this chapter under such procedure as it considers advisable and may adopt reasonable rules to carry out the provisions of this chapter. Each member of the board shall receive the compensation and travel expenses provided for in 37-3-206 while engaged in the active and necessary discharge of his duties under this chapter.
History: En. Sec. 1, Ch. 380, L. 1981.

37-20-202. Adoption of rules. The board of medical examiners shall adopt administrative rules to implement the provisions of this chapter that:

(1) address the issues of supervision and direction limitations and requirements;

(2) address the issue of protocols for interaction of medical personnel with differing responsibilities;

(3) specify that a physician may not utilize more than one physician assistant-certified unless the physician is able to demonstrate to the board the ability to supervise more than one assistant adequately;

(4) address other considerations pertinent to the approval of physician assistant-certified utilization plans and locum tenens utilization plans, and the health care needs of the public;

(5) address physician assistant training in Montana; and

(6) set forth grounds for disciplinary action.

History: En. Sec. 9, Ch. 380, L. 1981; amd. Sec. 13, Ch. 97, L. 1989; amd. Sec. 3, Ch. 446, L. 1991; amd. Sec. 9, Ch. 419, L. 1993.

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

Duty of boards to adopt rules on conduct, 37-1-121.

37-20-203. Licensing of physician assistants-certified. The Montana state board of medical examiners may issue the following two forms of physician assistants-certified licenses under its seal:

(1) a permanent license, signed by the president and subject to periodic renewal; and

(2) a temporary license, signed by any member of the board and subject to specifications and limitations imposed by the board.

History: En. Sec. 10, Ch. 419, L. 1993; amd. Sec. 27, Ch. 492, L. 1997.

Part 3
Utilization Plans

Part Cross-References

Licensing to follow contested case procedure, 2-4-631.

Suspension of license fees for persons in military service, 10-1-605.

Duty of Board to adopt and enforce licensing and certification rules, 37-1-131.

Licensing boards to establish fees commensurate with costs, 37-1-134.

Licensure of criminal offenders, Title 37, ch. 1, part 2.

Nondiscrimination in licensing, 49-3-204.

37-20-301. Utilization plan required — contents — approval. (1) A physician, office, firm, state institution, or professional service corporation may not employ or make use of the services of a physician assistant-certified in the practice of medicine, as defined in 37-3-102, and a physician assistant-certified may not be employed or practice as a physician assistant-certified unless the physician assistant-certified:

(a) is supervised by a licensed physician;

(b) is licensed by the Montana state board of medical examiners; and

(c) has received board approval of a physician assistant-certified utilization plan.

(2) A physician assistant-certified utilization plan must set forth in detail the following information:

(a) the name and qualifications of the supervising physician, as provided in 37-20-101, and the name and license number of the physician assistant-certified;

(b) the nature and location of the physician's medical practice;

(c) the scope of practice of the physician assistant-certified and the locations where the physician assistant-certified will practice;

(d) the name and qualifications of a second physician meeting the requirements of 37-20-101 to act as an alternate supervising physician in the absence of the primary supervising physician;

(e) necessary guidelines describing the intended availability of the supervising or alternate physician for consultation by the physician assistant-certified; and

(f) other information the board may consider necessary.

(3) The board shall approve the utilization plan if it finds that the practice of the physician assistant-certified is:

(a) assigned by the supervising physician;

(b) within the scope of the training, knowledge, experience, and practice of the supervisory physician; and

(c) within the scope of the training, knowledge, education, and experience of the physician assistant-certified.

(4) A supervising physician and a physician assistant-certified may submit a new or additional utilization plan to the board for approval without reestablishing the criteria set out in 37-20-402, so long as the information requirements of subsection (2) have been met and the appropriate fee provided for in 37-20-302(1) has been paid.

(5) A utilization plan may provide that a physician assistant-certified be allowed to furnish services on a locum tenens basis at a location other than the physician assistant-certified's primary place of practice. A locum tenens utilization plan may be approved by a single board member.

History: En. Sec. 2, Ch. 380, L. 1981; amd. Sec. 14, Ch. 97, L. 1989; amd. Sec. 2, Ch. 446, L. 1991; amd. Sec. 11, Ch. 419, L. 1993.

Cross-References

Professional service corporations, Title 35, ch. 4.

37-20-302. Utilization plan approval fee — renewal of license — renewal fee. (1) A utilization plan approval fee must be paid in an amount set by the board. Payment must be made when the utilization plan is submitted to the board and is not refundable.

(2) A locum tenens utilization plan approval fee must be paid in an amount set by the board.

(3) A license issued under this part must be renewed for a period and on a date set by the department.

(4) A license renewal fee set by the board must be paid at the time the license is renewed.

(5) The department shall mail a renewal notice no later than 60 days prior to the renewal date. A certified letter addressed to the delinquent licensee's last-known address as it appears on the records of the department constitutes notice of intent to revoke the license.

(6) If the license renewal fee is not paid on or before the renewal date, the board may revoke the license after giving 30 days' notice to the licensee. A license may not be revoked for nonpayment of a renewal fee if the licensee pays the renewal fee plus a penalty prescribed by the board on or before the date fixed for revocation.

(7) Fees received by the department must be deposited in the state special revenue fund for use by the board in the administration of this chapter, subject to 37-1-101(6).

History: **En. Sec. 4, Ch. 380, L. 1981; amd. Sec. 3, Ch. 274, L. 1981; amd. Sec. 1, Ch. 277, L. 1983; amd. Sec. 15, Ch. 97, L. 1989; amd. Sec. 5, Ch. 540, L. 1991; amd. Sec. 12, Ch. 419, L. 1993; amd. Sec. 73, Ch. 429, L. 1995; amd. Sec. 28, Ch. 492, L. 1997.**

37-20-303. Exemptions from approval requirement. This chapter does not require the approval of a physician assistant-certified utilization plan or locum tenens utilization plan with respect to any acts within the professional competence of a person licensed under the provisions of Title 37, chapters 3 through 17, 31, or 32.

History: **En. Sec. 6, Ch. 380, L. 1981; amd. Sec. 16, Ch. 97, L. 1989.**

Part 4

Regulation of Practice

Part Cross-References

Coverage required for services provided by physician assistants-certified, 33-22-114.

37-20-401. Definitions. As used in this chapter, the following definitions apply:

(1) "Board" means the Montana state board of medical examiners established in 2-15-1841.

(2) "Locum tenens" means the temporary provision of services within the scope of practice of a physician assistant-certified.

(3) "Physician assistant-certified" means a member of a health care team, approved by the board, who provides medical services that may include examination, diagnosis, prescription of medications, and treatment, as approved by the board, under the supervision of a physician licensed by the board.

(4) "Protocol" means the proper relationship between a physician assistant-certified and other health care practitioners and the manner of their interaction.

History: **En. Sec. 1, Ch. 97, L. 1989.**

37-20-402. Criteria for licensing a physician assistant-certified. A person may not be licensed as a physician assistant-certified in this state unless the person:

(1) is of good moral character;

(2) is a graduate of a physician assistant training program approved by the American medical association's committee on allied health education and accreditation;

(3) has taken and successfully passed an examination recognized by the national commission on the certification of physician assistants;

(4) holds a current certificate from the national commission on the certification of physician assistants; and

(5) has submitted to the board detailed information on the person's history, education, and experience.

History: En. Sec. 2, Ch. 97, L. 1989; amd. Sec. 13, Ch. 419, L. 1993.

37-20-403. Physician assistant-certified as agent of supervising physician. (1) In establishing protocol, a physician assistant-certified must be considered the agent of the supervising physician with regard to all duties delegated to the physician assistant-certified under the utilization plan. A health care provider shall consider the instructions of a physician assistant-certified as being the instructions of the supervising physician as long as the instructions concern the duties delegated to the physician assistant-certified under the utilization plan.

(2) The supervising physician and the physician assistant-certified are responsible for making available a copy of the approved utilization plan to all other health care practitioners with whom they reasonably believe they will interact on a regular basis.

History: En. Sec. 3, Ch. 97, L. 1989; amd. Sec. 74, Ch. 429, L. 1995.

37-20-404. Prescribing and dispensing authority — discretion of supervising physician on limitation of authority. (1) A physician assistant-certified may prescribe, dispense, and administer drugs to the extent authorized by the board by rule, by the utilization plan, or both. The prescribing, dispensing, and administration of drugs are also subject to the authority of the supervising physician, and the supervising physician may impose additional limitations on the prescribing and dispensing authority granted by the board.

(2) All dispensing activities allowed by this section must comply with 37-2-104 and with packaging and labeling guidelines developed by the board of pharmacy under Title 37, chapter 7.

(3) The prescribing and dispensing authority granted a physician assistant-certified may include the following:

(a) Prescribing, dispensing, and administration of Schedule III drugs listed in 50-32-226, Schedule IV drugs listed in 50-32-229, and Schedule V drugs listed in 50-32-232 is authorized.

(b) Prescribing, dispensing, and administration of Schedule II drugs listed in 50-32-224 may be authorized for limited periods not to exceed 34 days.

(c) Records on the dispensing and administration of scheduled drugs must be kept.

(d) A physician assistant-certified shall maintain registration with the federal drug enforcement administration.

(e) Prescriptions written by physician assistants-certified must comply with regulations relating to prescription requirements adopted by the board of pharmacy.

(f) The board shall adopt rules regarding the refilling of prescriptions written by physician assistants-certified.

History: En. Sec. 4, Ch. 97, L. 1989; amd. Sec. 14, Ch. 419, L. 1993; amd. Sec. 2, Ch. 327, L. 1995.

37-20-405. Billing. A supervising physician, office, firm, institution, or other entity may bill for physician assistant-certified services.

History: En. Sec. 5, Ch. 97, L. 1989; amd. Sec. 15, Ch. 419, L. 1993.

37-20-406. Liaison to board. The Montana academy of physician assistants shall elect one person to serve as a nonvoting liaison to the board to represent the interests of physician assistants.

History: En. Sec. 6, Ch. 97, L. 1989.

37-20-407 and 37-20-408 reserved.

37-20-409. Repealed. Sec. 128, Ch. 429, L. 1995.

History: En. Sec. 8, Ch. 419, L. 1993.

CHAPTER 21

DIETITIANS

Part 1 — General

37-21-101. Definitions.

Part 2 — Department of Public Health and Human Services

37-21-201. Rules.

Part 3 — Qualifications

37-21-301. Dietitian — qualifications.
37-21-302. Registered dietitian — qualifications.

Part 4 — Remedies—Penalty

37-21-401 through 37-21-404 reserved.
37-21-405. Remedies cumulative.
37-21-406. Violation — penalty.

Part 1
General

37-21-101. Definitions. As used in this chapter, the following definitions apply:

(1) "Authorized agency" means a private agency or institution authorized by the department to establish academic, experience, and training qualifications for dietitians.

(2) "Department" means the department of public health and human services as provided in 2-15-2201.

History: En. Sec. 1, Ch. 427, L. 1983; amd. Sec. 62, Ch. 418, L. 1995; amd. Sec. 91, Ch. 546, L. 1995.

Part 2
Department of Public Health and Human Services

37-21-201. Rules. The department may adopt rules in accordance with the Montana Administrative Procedure Act to implement this chapter. The rules may adopt standards, consistent with this chapter, promulgated by an authorized agency relating to academic, experience, and training requirements.

History: En. Sec. 4, Ch. 427, L. 1983.

Cross-References

Montana Administrative Procedure Act, Title 2, ch. 4.

Part 3
Qualifications

37-21-301. Dietitian — qualifications. No person may use, in connection with his name or place of business, the term "dietitian" or represent in any way that he is a dietitian unless he:

(1) has been granted, prior to October 1, 1983, the right to use the term "dietitian" by an authorized agency; or

(2) (a) is 18 years of age or older;

(b) has satisfactorily completed appropriate academic requirements for the field of dietetics and related disciplines;

(c) has received a baccalaureate or higher degree in dietetics or a related field from a college or university accredited by the Northwestern association of schools and colleges; and

(d) has satisfactorily completed a program of supervised clinical experience of not less than 6 months in length that is designed to train entry-level dietitians through instruction and assignments in a clinical setting. The program must meet minimum requirements established by the department.

History: En. Sec. 2, Ch. 427, L. 1983.

Cross-References

Grounds for disciplinary action as grounds for license denial — conditions to new licenses, 37-1-137.

37-21-302. Registered dietitian — qualifications. No person may use, in connection with his name or place of business, the term "registered dietitian" or represent in any way that he is a registered dietitian unless he:

(1) has been granted, prior to October 1, 1983, the right to use the term "registered dietitian" by an authorized agency; or

(2) (a) has fulfilled all the requirements set forth in 37-21-301(2);

(b) has satisfactorily completed an examination for registered dietitians administered by an authorized agency; and

(c) has satisfactorily completed, from time to time, such continuing education requirements as may be established by an authorized agency.

History: En. Sec. 3, Ch. 427, L. 1983.

Part 4
Remedies — Penalty

37-21-401 through 37-21-404 reserved.

37-21-405. Remedies cumulative. Remedies provided under this chapter are in addition to any other civil or criminal remedy provided by law.

History: En. Sec. 6, Ch. 427, L. 1983.

37-21-406. Violation — penalty. A person who violates this chapter or rules adopted under this chapter is guilty of a misdemeanor and is punishable by a fine not to exceed $500.

History: **En. Sec. 5, Ch. 427, L. 1983.**

CHAPTER 22

SOCIAL WORK

Part 1 — General

37-22-101. Purpose.
37-22-102. Definitions.

Part 2 — Board of Social Work Examiners and Professional Counselors

37-22-201. Duties of board.

Part 3 — Licensing

37-22-301. License requirements — exemptions.
37-22-302. Fees.
37-22-303. Issuance, effective date, and display of license.
37-22-304. Renewal of license.
37-22-305. Representation to public as licensed clinical social worker — limitations on use of title — limitations on practice.
37-22-306. Repealed.
37-22-307 through 37-22-310 reserved.
37-22-311. Repealed.
37-22-312. Repealed.

Part 4 — Regulation

37-22-401. Privileged communications — exceptions.
37-22-402 through 37-22-410 reserved.
37-22-411. Violations — penalties.

Chapter Cross-References

Liability of mental health professionals, Title 27, ch. 1, part 11.

Duty to warn of violent behavior, 27-1-1102.

Disability insurance — freedom of choice in selection of practitioners, 33-22-111.

Child abuse and neglect — reports and investigations — penalty, Title 41, ch. 3, part 2.

Abuse or neglect of elderly or persons with developmental disabilities — duty to report, 52-3-811.

Part 1
General

37-22-101. Purpose. The legislature finds and declares that because the profession of social work profoundly affects the lives of people of this state it is the purpose of this chapter to provide for the common good by insuring ethical, qualified, and professional practice of social work. This chapter and the rules promulgated under 37-22-201 set standards of qualification, education, training, and experience and will establish professional ethics for those who seek to engage in the practice of social work as licensed social workers.

History: **En. Sec. 2, Ch. 544, L. 1983.**

37-22-102. Definitions. As used in this chapter:

(1) "Board" means the board of social work examiners and professional counselors established under 2-15-1854.

(2) "Department" means the department of commerce.

(3) "Licensee" means a person licensed under this chapter.

(4) "Psychotherapy" means the use of psychosocial methods within a professional relationship to assist a person to achieve a better psychosocial adaptation and to modify internal and external conditions that affect individuals, groups, or families in respect to behavior, emotions, and thinking concerning their interpersonal processes.

(5) "Social work" means the professional practice directed toward helping people achieve more adequate, satisfying, and productive social adjustments. The practice of social work involves special knowledge of social resources, human capabilities, and the roles that individual motivation and social influences play in determining behavior and involves the application of social work techniques, including:

(a) counseling and using psychotherapy with individuals, families, or groups;

(b) providing information and referral services;

(c) providing, arranging, or supervising the provision of social services;

(d) explaining and interpreting the psychosocial aspects in the situations of individuals, families, or groups;

(e) helping communities to organize to provide or improve social and health services; and

(f) research or teaching related to social work.

History: En. Sec. 3, Ch. 544, L. 1983; amd. Sec. 18, Ch. 572, L. 1985.

Cross-References

Professional counseling, Title 37, ch. 23.

Part 2

Board of Social Work Examiners and Professional Counselors

37-22-201. Duties of board. The board shall:

(1) subject to 37-1-101, examine qualified applicants, issue licenses to qualified applicants that meet the requirements of this chapter, and renew licenses under the provisions of this chapter;

(2) recommend prosecutions for violations of 37-22-411 to the attorney general or the appropriate county attorney, or both;

(3) annually publish a list of the names and addresses of all persons who are licensed social workers;

(4) establish requirements for continuing education that are a condition of license renewal;

(5) meet at least once every 3 months to perform the duties described in this section. The board may, once a year by a consensus of its members, determine that there is no necessity for a board meeting.

(6) distribute a copy of the ethical standards to the certified masters of social work; and

(7) adopt rules that set professional, practice, and ethical standards for licensed masters of social work and such other rules as may be reasonably necessary for the administration of this chapter.

History: **En. Sec. 4, Ch. 544, L. 1983.**

Cross-References

Duties of boards, 37-1-131.

Disciplinary authority of boards — injunctions, 37-1-136.

Part 3
Licensing

Part Cross-References

Licensing boards to establish fees commensurate with costs, 37-1-134.

Grounds for disciplinary action as grounds for license denial — conditions to new licenses, 37-1-137.

37-22-301. License requirements — exemptions. (1) A license applicant shall satisfactorily complete an examination prepared and administered by the board.

(2) Before an applicant may take the examination, the applicant shall present three letters of reference from licensed social workers, licensed clinical social workers, psychiatrists, or psychologists who have knowledge of the applicant's professional performance and shall demonstrate to the board that the applicant:

(a) has a doctorate or master's degree in social work from a program accredited by the council on social work education or approved by the board;

(b) has completed at least 24 months of supervised post master's degree work experience in psychotherapy, which included 3,000 hours of social work experience, of which at least 1,500 hours were in direct client contact, within the past 5 years; and

(c) abides by the social work ethical standards adopted under 37-22-201.

(3) An applicant who submits an application for licensure before October 1, 1994, may acquire the supervised experience required by subsection (2)(b) in less than 24 months.

(4) An applicant who has failed the examination may reapply to take the examination.

(5) An applicant is exempt from the examination requirement if the applicant satisfies the board that the applicant is licensed, certified, or registered under the laws of a state or territory of the United States that imposes substantially the same requirements as this chapter and that the applicant has passed an examination similar to that required by the board.

History: **En. Sec. 6, Ch. 544, L. 1983; amd. Sec. 1, Ch. 78, L. 1987; amd. Sec. 1, Ch. 552, L. 1993.**

37-22-302. Fees. (1) Each applicant for a license shall, upon submitting his application to the board, pay an application fee set by the board equal to the cost of processing the application.

(2) Each applicant for a license required to take an examination shall, prior to commencement of the examination, pay an examination fee set by the board equal to the cost of administering the examination.

(3) Each applicant shall, prior to receipt of a license or license renewal, pay a fee set by the board equal to the cost of issuing a license.

(4) Subject to 37-1-101(6), money paid for application, examination, license, and license renewal fees must be deposited in the state special revenue fund for the use of the board.

History: En. Sec. 7, Ch. 544, L. 1983; amd. Sec. 48, Ch. 281, L. 1983.

37-22-303. Issuance, effective date, and display of license. (1) Upon successful completion of the examination required by 37-22-301 or upon demonstration by a person that he is exempt from examination and has otherwise fulfilled the requirements of 37-22-301, the applicant must be issued a license attesting to the date and fact of licensure. The license is effective on the date of issuance and expires December 31 of each year.

(2) The license must be displayed in the registrant's place of business or employment.

History: En. Sec. 8, Ch. 544, L. 1983; amd. Sec. 2, Ch. 78, L. 1987.

37-22-304. Renewal of license. (1) An application for renewal of an existing license must be made on or before the date set by department rule.

(2) Application for renewal must be made upon a form provided by the department. A renewal license must be issued upon payment of a renewal fee set by the board and upon submitting proof of qualification for renewal.

(3) The renewal fee is increased by 10% for each month or part of a month that the renewal is delayed. The maximum fee for delayed renewal may not exceed twice the normal renewal fee.

(4) A license not renewed within 1 year following its expiration date terminates automatically.

History: En. Sec. 9, Ch. 544, L. 1983; amd. Sec. 2, Ch. 552, L. 1993; amd. Sec. 75, Ch. 429, L. 1995.

37-22-305. Representation to public as licensed clinical social worker — limitations on use of title — limitations on practice. (1) Upon issuance of a license in accordance with this chapter, a licensee may use the title "licensed clinical social worker". Except as provided in subsection (2), a person may not represent that the person is a licensed clinical social worker by adding the letters "LSW" or "LCSW" after the person's name or by any other means unless licensed under this chapter.

(2) Individuals licensed in accordance with this chapter before October 1, 1993, who use the title "licensed social worker" or "LSW" may use the title "licensed clinical social worker" or "LCSW".

(3) Subsection (1) does not prohibit:

(a) qualified members of other professions, such as physicians, psychologists, lawyers, pastoral counselors, educators, or the general public engaged in social work like activities, from doing social work consistent with their training if they do not hold themselves out to the public by a title or description incorporating the words "licensed social worker" or "licensed clinical social worker";

(b) activities, services, and use of an official title by a person in the employ of or under a contract with a federal, state, county, or municipal agency, an educational, research, or charitable institution, or a health care facility licensed under the provisions of Title 50, chapter 5, that are a part of the duties of the office or position;

(c) an employer from performing social work like activities performed solely for the benefit of employees;

(d) activities and services of a student, intern, or resident in social work pursuing a course of study at an accredited university or college or working in a generally recognized training center if the activities and services constitute a part of the supervised course of study;

(e) activities and services by a person who is not a resident of this state that are rendered for a period that does not exceed, in the aggregate, 60 days during a calendar year if the person is authorized under the law of the state or country of residence to perform the activities and services. However, the person shall report to the department the nature and extent of the activities and services if they exceed 10 days in a calendar year.

(f) pending disposition of the application for a license, activities and services by a person who has recently become a resident of this state, has applied for a license within 90 days of taking up residency in this state, and is licensed to perform the activities and services in the state of former residence.

History: En. Sec. 5, Ch. 544, L. 1983; amd. Sec. 3, Ch. 552, L. 1993.

37-22-306. Repealed. Sec. 128, Ch. 429, L. 1995.

History: En. Sec. 7, Ch. 552, L. 1993.

37-22-307 through 37-22-310 reserved.

37-22-311. Repealed. Sec. 128, Ch. 429, L. 1995.

History: En. Sec. 10, Ch. 544, L. 1983.

37-22-312. Repealed. Sec. 128, Ch. 429, L. 1995.

History: En. Sec. 11, Ch. 544, L. 1983; amd. Sec. 4, Ch. 552, L. 1993.

Part 4
Regulation

37-22-401. Privileged communications — exceptions. A licensee may not disclose any information he acquires from clients consulting him in his professional capacity except:

(1) with the written consent of the client or, in the case of the client's death or mental incapacity, with the written consent of the client's personal representative or guardian;

(2) that he need not treat as confidential a communication otherwise confidential that reveals the contemplation of a crime by the client or any other person or that in his professional opinion reveals a threat of imminent harm to the client or others;

(3) that if the client is a minor and information acquired by the licensee indicates that the client was the victim of a crime, the licensee may be required to testify fully in relation thereto in any investigation, trial, or other legal proceeding in which the commission of such crime is the subject of inquiry;

(4) that if the client or his personal representative or guardian brings an action against a licensee for a claim arising out of the social worker-client relationship, the client is considered to have waived any privilege;

(5) to the extent that the privilege is otherwise waived by the client; and

(6) as may otherwise be required by law.

History: En. Sec. 12, Ch. 544, L. 1983.

Cross-References

Privileges, Title 26, ch. 1, part 8.

Duties of witnesses, Title 26, ch. 2, part 3.

37-22-402 through 37-22-410 reserved.

37-22-411. Violations — penalties. (1) It is a misdemeanor for a person to:

(a) represent himself as a licensed social worker without being licensed under this chapter;

(b) obtain or attempt to obtain a license or license renewal by bribery or fraudulent representation; or

(c) knowingly make a false statement on any form used by the board to implement this chapter or the rules adopted under this chapter.

(2) A person convicted under this section shall be imprisoned in the county jail for a period not exceeding 6 months or fined not more than $500, or both. A person convicted of a second offense under this section shall be punished by both such fine and imprisonment.

History: En. Sec. 13, Ch. 544, L. 1983.

CHAPTER 23

PROFESSIONAL COUNSELING

Part 1 — General

37-23-101. Purpose.
37-23-102. Definitions.
37-23-103. Powers and duties of board.

Part 2 — Licensing

37-23-201. Representation or practice as licensed clinical professional counselor — license required.
37-23-202. Licensure requirements.
37-23-203. Issuance, effective date, and display of license.
37-23-204. Repealed.
37-23-205. Renewal of license.
37-23-206. Fees.
37-23-207. Repealed.
37-23-208. Terminated.
37-23-209 and 37-23-210 reserved.
37-23-211. Repealed.
37-23-212. Repealed.

Part 3 — Regulation—Penalties

37-23-301. Privileged communications — exceptions.
37-23-302 through 37-23-310 reserved.
37-23-311. Misdemeanor violations — penalties.

Chapter Cross-References

Liability of mental health professionals, Title 27, ch. 1, part 11.

Duty to warn of violent behavior, 27-1-1102.

Disability insurance — freedom of choice in selection of practitioners, 33-22-111.

Child abuse and neglect — reports and investigations — penalty, Title 41, ch. 3, part 2.

Abuse or neglect of elderly or persons with developmental disabilities — duty to report, 52-3-811.

Part 1
General

37-23-101. Purpose. The legislature finds and declares that because the profession of professional counseling profoundly affects the lives of people of this state, it is the purpose of this chapter to provide for the common good by ensuring ethical, qualified, and professional practice of professional counseling. This chapter and the rules promulgated under 37-23-103 set standards of qualification, education, training, and experience and establish professional ethics for those who seek to engage in the practice of professional counseling as licensed professional counselors.

History: En. Sec. 1, Ch. 572, L. 1985.

37-23-102. Definitions. As used in this chapter, the following definitions apply:

(1) "Board" means the board of social work examiners and professional counselors established under 2-15-1854.

(2) "Licensee" means a person licensed under this chapter.

(3) "Professional counseling" means engaging in methods and techniques that include:

(a) counseling, which means the therapeutic process of:

(i) conducting assessments and diagnoses for the purpose of establishing treatment goals and objectives; or

(ii) planning, implementing, and evaluating treatment plans that use treatment interventions to facilitate human development and to identify and remediate mental, emotional, or behavioral disorders and associated distresses that interfere with mental health;

(b) assessment, which means selecting, administering, scoring, and interpreting instruments designed to assess an individual's aptitudes, attitudes, abilities, achievement, interests, and personal characteristics and using nonstandardized methods and techniques for understanding human behavior in relation to coping with, adapting to, or changing life situations;

(c) counseling treatment intervention, which means those cognitive, affective, behavioral, and systemic counseling strategies, techniques, and methods common to the behavioral sciences that are specifically implemented in the context of a therapeutic relationship. Other treatment interventions include developmental counseling, guidance, and consulting to facilitate normal growth and development, including educational and career development; and

(d) referral, which means evaluating information to identify needs or problems of an individual and to determine the advisability of referral to other specialists, informing the individual of the judgment, and communicating as requested or considered appropriate with the referral sources.

History: En. Sec. 2, Ch. 572, L. 1985; amd. Sec. 1, Ch. 536, L. 1995.

Cross-References

Social work, Title 37, ch. 22.

37-23-103. Powers and duties of board. (1) The board shall:

(a) recommend amendments to this chapter to the governor or the legislature, or both;

(b) recommend prosecutions for violations of 37-23-311 to the attorney general or appropriate county attorneys, or both;

(c) annually publish a list of the names and addresses of all persons who are licensed professional counselors;

(d) meet to perform the duties described in this section;

(e) adopt rules that set professional and ethical standards for licensed professional counselors that are based on national standards and other rules as may be reasonably necessary for the administration of this chapter; and

(f) distribute a copy of the professional and ethical standards to each licensed professional counselor.

(2) The board may adopt rules governing the issuance of certificates of special competence in particular areas of practice as a licensed professional counselor. The board shall establish criteria for each particular area for which a certificate is issued.

History: En. Sec. 3, Ch. 572, L. 1985; amd. Sec. 76, Ch. 429, L. 1995.

Cross-References

Right to know, Art. II, sec. 9, Mont. Const.

Open meetings, Title 2, ch. 3, part 2.

Meeting defined, 2-3-202.

Adoption and publication of rules, Title 2, ch. 4, part 3.

Public records, Title 2, ch. 6.

Allocation of boards for administrative purposes, 2-15-121.

Quasi-judicial boards, 2-15-124.

Preservation of records, Title 22, ch. 3, part 2.

Duty of Department to keep records, 37-1-101.

Duty of Department to provide facilities, 37-1-101.

Licensing investigation and review — record access, 37-1-135.

Disrupting meeting as disorderly conduct, 45-8-101.

Part 2
Licensing

Part Cross-References

Licensing to follow contested case procedure, 2-4-631.

Suspension of license fees for persons in military service, 10-1-605.

Duty of Department to administer and grade examinations, 37-1-101.

Duty of Board to adopt and enforce licensing and certification rules, 37-1-131.

Licensing boards to establish fees commensurate with costs, 37-1-134.

Licensing investigation and review — record access, 37-1-135.

Grounds for disciplinary action as grounds for license denial — conditions to new licenses, 37-1-137.

Licensure of criminal offenders, Title 37, ch. 1, part 2.

Nondiscrimination in licensing, 49-3-204.

37-23-201. Representation or practice as licensed clinical professional counselor — license required. (1) Upon issuance of a license in accordance with this chapter, a licensee may use the title "licensed clinical professional counselor" or "professional counselor".

(2) Except as provided in subsection (3), a person may not represent that the person is a licensed professional counselor or licensed clinical professional counselor by adding the letters "LPC" or "LCPC" after the person's name or by any other means, engage in the practice of professional counseling, or represent that the person is engaged in the practice of professional counseling, unless licensed under this chapter.

(3) Individuals licensed in accordance with this chapter before October 1, 1993, who use the title "licensed professional counselor" or "LPC" may use the title "licensed clinical professional counselor" or "LCPC".

(4) Subsection (2) does not prohibit:

(a) a qualified member of another profession, such as a physician, lawyer, pastoral counselor, probation officer, court employee, nurse, school counselor, educator, chemical dependency counselor accredited by a federal agency, or chemical dependency counselor certified pursuant to Title 37, chapter 35, from performing duties and services consistent with the person's licensure or certification and the code of ethics of the person's profession or, in the case of a qualified member of another profession who is not licensed or certified or for whom there is no applicable code of ethics, from performing duties and services consistent with the person's training, as long as the person does not represent by title that the person is engaging in the practice of professional counseling;

(b) an activity or service or use of an official title by a person employed by or acting as a volunteer for a federal, state, county, or municipal agency or an educational, research, or charitable institution that is a part of the duties of the office or position;

(c) an activity or service of an employee of a business establishment performed solely for the benefit of the establishment's employees;

(d) an activity or service of a student, intern, or resident in mental health counseling pursuing a course of study at an accredited university or college or working in a generally recognized training center if the activity or service constitutes a part of the supervised course of study;

(e) an activity or service of a person who is not a resident of this state, which activity or service is rendered for a period that does not exceed, in the aggregate, 60 days during a calendar year, if the person is authorized under the law of the state or country of residence to perform the activity or service. However, the person shall report to the department of commerce the nature and extent of the activity or service if it exceeds 10 days in a calendar year.

(f) pending disposition of the application for a license, the activity or service by a person who has recently become a resident of this state, has applied for a license within 90 days of taking up residency in this state, and is licensed to perform the activity or service in the state of the person's former residence;

(g) an activity or service of a person who is working to satisfactorily complete the 3,000 hours of counseling practice required for licensure by 37-23-202(1)(b) if the person has already completed a planned graduate program as required by 37-23-202(1)(a) or is working to complete the 3,000 hours of social work experience as required by 37-22-301; or

(h) an activity or service performed by a licensed social worker, licensed psychiatrist, or licensed psychologist when performing the activity or service in a manner consistent with the person's license and the code of ethics of the person's profession.

History: En. Sec. 4, Ch. 572, L. 1985; amd. Sec. 9, Ch. 552, L. 1993; amd. Sec. 2, Ch. 536, L. 1995; amd. Sec. 12, Ch. 507, L. 1997.

37-23-202. Licensure requirements. (1) An applicant for licensure must have satisfactorily completed:

(a) a planned graduate program of 60 semester hours, primarily counseling in nature, 6 semester hours of which were earned in an advanced counseling practicum, which resulted in a graduate degree from an institution accredited to offer a graduate program in counseling;

(b) 3,000 hours of counseling practice supervised by a licensed professional counselor or licensed member of an allied mental health profession, at least half of which was postdegree. The applicant must have each supervisor endorse the application for licensure, attesting to the number of hours supervised.

(c) and passed an examination prepared and administered by:

(i) the board, based on a national examination approved by the board;

(ii) the national board of certified counselors; or

(iii) the national academy of certified clinical mental health counselors; and

(d) an application form and process prescribed by the board.

(2) The board shall provide by rule for licensure of a person who possesses a minimum 45 semester hour graduate degree that is primarily related to counseling and that is from an institution accredited to offer a graduate program in counseling, by specifying the additional graduate credit hours necessary to fulfill the requirements of subsection (1)(a) in counseling courses in an approved program within a period of 5 years.

History: En. Sec. 5, Ch. 572, L. 1985; amd. Sec. 3, Ch. 78, L. 1987; amd. Sec. 1, Ch. 197, L. 1993; amd. Sec. 10, Ch. 552, L. 1993; amd. Sec. 77, Ch. 429, L. 1995.

37-23-203. Issuance, effective date, and display of license. (1) If an applicant meets the requirements contained in 37-23-202 and has paid the appropriate fees, the board shall issue a license to the applicant attesting to the date and fact of licensure. The license is effective on the date of issuance and must be renewed as provided in 37-23-205.

(2) The license must be displayed in the registrant's place of business or employment.

History: En. Sec. 7, Ch. 572, L. 1985; amd. Sec. 29, Ch. 492, L. 1997.

37-23-204. Repealed. Sec. 128, Ch. 429, L. 1995.

History: En. Sec. 8, Ch. 572, L. 1985.

37-23-205. Renewal of license. (1) The department may adopt rules to provide for the renewal of an existing license.

(2) An application for renewal of an existing license must be made on or before the expiration date set by department rule.

(3) Application for renewal must be made upon a form provided by the department. A renewal license must be issued upon payment of a renewal fee set by the board and upon submitting proof of qualification for renewal.

(4) The renewal fee is increased by 10% for each month or part of a month that the renewal is delayed. The maximum fee for delayed renewal may not exceed twice the normal renewal fee.

(5) A license not renewed within 1 year following its expiration date terminates automatically.

History: En. Sec. 9, Ch. 572, L. 1985; amd. Sec. 5, Ch. 552, L. 1993; amd. Sec. 78, Ch. 429, L. 1995; amd. Sec. 30, Ch. 492, L. 1997.

37-23-206. Fees. (1) Each applicant for a license shall, upon submitting his application to the board, pay an application fee set by the board commensurate with costs.

(2) Each applicant for a license required to take an examination shall, before commencement of the examination, pay an examination fee set by the board commensurate with costs.

(3) Each applicant shall, before receipt of a license or license renewal, pay a fee set by the board commensurate with costs.

(4) Subject to 37-1-101(6), money paid for application, examination, license, and license renewal fees must be deposited in the state special revenue fund for the use of the board.

History: En. Sec. 6, Ch. 572, L. 1985.

37-23-207. Repealed. Sec. 128, Ch. 429, L. 1995.

History: En. Sec. 8, Ch. 552, L. 1993.

37-23-208. Terminated. Sec. 4, Ch. 278, L. 1997.

History: En. Sec. 1, Ch. 278, L. 1997.

37-23-209 and 37-23-210 reserved.

37-23-211. Repealed. Sec. 128, Ch. 429, L. 1995.

History: En. Sec. 10, Ch. 572, L. 1985.

37-23-212. Repealed. Sec. 128, Ch. 429, L. 1995.

History: En. Sec. 11, Ch. 572, L. 1985; amd. Sec. 6, Ch. 552, L. 1993.

Part 3
Regulation — Penalties

37-23-301. Privileged communications — exceptions. A licensee may not disclose any information he acquires from clients consulting him in his professional capacity except:

(1) with the written consent of the client or, in the case of the client's death or mental incapacity, with the written consent of the client's personal representative or guardian;

(2) that he need not treat as confidential a communication otherwise confidential that reveals the contemplation of a crime by the client or any other person or that in his professional opinion reveals a threat of imminent harm to the client or others;

(3) that if the client is a minor and information acquired by the licensee indicates that the client was the victim of a crime, the licensee may be required to testify fully in relation thereto in any investigation, trial, or other legal proceeding in which the commission of such crime is the subject of inquiry;

(4) that if the client or his personal representative or guardian brings an action against a licensee for a claim arising out of the counselor-client relationship, the client is considered to have waived any privilege;

(5) to the extent that the privilege is otherwise waived by the client; and

(6) as may otherwise be required by law.

History: En. Sec. 12, Ch. 572, L. 1985.

Cross-References

Privileges, Title 26, ch. 1, part 8.

Duties of witnesses, Title 26, ch. 2, part 3.

37-23-302 through 37-23-310 reserved.

37-23-311. Misdemeanor violations — penalties. (1) It is a misdemeanor for a person to knowingly:

(a) engage in the practice of professional counseling, except as provided in 37-23-201(4);

(b) represent that the person is a licensed professional counselor without being licensed under this chapter;

(c) obtain or attempt to obtain a license or license renewal by bribery or fraudulent representation; or

(d) make a false statement on any form used by the board to implement this chapter or the rules adopted under this chapter.

(2) A person convicted under this section shall be imprisoned in the county jail for a period not exceeding 6 months or fined not more than $500, or both. A person convicted of any subsequent offense under this section shall be punished by both fine and imprisonment.

History: En. Sec. 13, Ch. 572, L. 1985; amd. Sec. 3, Ch. 536, L. 1995.

CHAPTER 24

OCCUPATIONAL THERAPY

Part 1 — General Provisions

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37-24-310. Fees.
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Part 1

General Provisions

37-24-101. Short title. This chapter may be cited as the "Occupational Therapy Practice Act".

History: En. Sec. 1, Ch. 629, L. 1985.

37-24-102. Purpose. The legislature declares that it is the purpose of this chapter to provide for the regulation of persons offering occupational therapy services in order to:

(1) safeguard the public health, safety, and welfare;

(2) protect the public from incompetent, unscrupulous, and unauthorized persons;

(3) assure the highest degree of professional conduct on the part of occupational therapists and occupational therapy assistants; and

(4) assure the availability of occupational therapy services of high quality to persons in need of such services.

History: En. Sec. 2, Ch. 629, L. 1985.

37-24-103. Definitions. As used in this chapter, unless the context requires otherwise, the following definitions apply:

(1) "Board" means the board of occupational therapy practice established by 2-15-1859.

(2) "Certified occupational therapy assistant" means a person licensed to assist in the practice of occupational therapy under this chapter, who works under the general supervision of an occupational therapist in accordance with the provisions of the Essentials for an Approved Educational Program for the Occupational Therapy Assistant, published by the American occupational therapy association and adopted by the board.

(3) "Department" means the department of commerce provided for in Title 2, chapter 15, part 18.

(4) "Occupational therapist" means a person licensed to practice occupational therapy under this chapter.

(5) "Occupational therapy" means the use of purposeful activity and interventions to achieve functional outcomes to maximize the independence and the maintenance of health of an individual who is limited by physical injury or illness, psychosocial dysfunction, mental illness, developmental or learning disability, the aging process, cognitive impairment, or an adverse environmental condition. The practice encompasses assessment, treatment, and consultation. Occupational therapy services may be provided individually, in groups, or through social systems. Occupational therapy interventions include but are not limited to:

(a) teaching daily living skills;

(b) developing perceptual-motor skills and sensory integrative functioning;

(c) developing play skills and leisure capacities and enhancing educational performance skills;

(d) designing, fabricating, or applying splints or selective adaptive equipment and training in the use of upper extremity prosthetics or upper extremity orthotic devices;

(e) providing for the development of emotional, motivational, cognitive, psychosocial, or physical components of performance;

(f) providing assessment and evaluation, including the use of skilled observation or the administration and interpretation of standardized or nonstandardized tests and measurements to identify areas for occupational therapy services;

(g) adapting environments for the disabled, including assistive technology, such as environmental controls, wheelchair modifications, and positioning;

(h) developing feeding and swallowing skills;

(i) enhancing and assessing work performance and work readiness through occupational therapy intervention, including education and instruction, activities to increase and improve general work behavior and skill, job site evaluation, on-the-job training and evaluation, development of work-related activities, and supported employment placement;

(j) providing neuromuscular facilitation and inhibition, including the activation, facilitation, and inhibition of muscle action, both voluntary and involuntary, through the use of appropriate sensory stimulation, including vibration or brushing, to evoke a desired muscular response;

(k) employing physical agent modalities as defined in this section; and

(l) promoting health and wellness.

(6) "Occupational therapy aide" means a person who assists in the practice of occupational therapy under the direct supervision of an occupational therapist or occupational therapy assistant and whose activities require an understanding of occupational therapy but do not require professional or advanced training in the basic anatomical, biological, psychological, and social sciences involved in the practice of occupational therapy.

(7) "Physical agent modalities" means those modalities that produce a response in soft tissue through the use of light, water, temperature, sound, or electricity. Physical agent modalities are characterized as adjunctive methods used in conjunction with or in immediate preparation for patient involvement in purposeful activity. Superficial physical agent modalities include hot packs, cold packs, ice, fluidotherapy, paraffin, water, and other commercially available superficial heating and cooling devices. Use of superficial physical agent modalities is limited to the shoulder, arm, elbow, forearm, wrist, and hand and is subject to the provisions of 37-24-105. Use of sound and electrical physical agent modality devices is limited to the elbow, forearm, wrist, and hand and is subject to the provisions of 37-24-106.

(8) "Purposeful activity" means an activity in which the individual is an active, voluntary participant and is directed toward a goal that the individual considers meaningful. Purposeful activities are used to evaluate, facilitate, restore, or maintain individuals' abilities to function within their daily occupations.

History: En. Sec. 3, Ch. 629, L. 1985; amd. Sec. 1, Ch. 35, L. 1991; amd. Sec. 1, Ch. 297, L. 1993.

37-24-104. Exemptions. Nothing in this chapter prevents or restricts the practice, services, or activities of:

(1) a person licensed in this state under any other law or certified or registered as a member of an occupational or professional group other than occupational therapy from engaging in the profession or occupation for which he is licensed, certified, or registered;

(2) a person who provides treatment, teaches living skills, designs orthotic or prosthetic devices, administers tests, or engages in other activities described in 37-24-103 but does not represent himself as an occupational therapist;

(3) a person employed as an occupational therapist or occupational therapy assistant by an institution or agency of the federal government;

(4) a person pursuing a supervised course of study leading to a degree or certificate in occupational therapy at an accredited institution or under an approved educational program if the person is designated by a title that clearly indicates his status as a student or trainee;

(5) a person fulfilling the supervised fieldwork experience requirements of 37-24-303 if the experience constitutes a part of the experience necessary to meet the requirements of that section;

(6) a person performing occupational therapy services in the state if these services are performed for no more than 10 days in a calendar year in association with an occupational therapist licensed under this chapter, provided that:

(a) the person is licensed under the law of another state that has licensure requirements at least as stringent as the requirements of this chapter; or

(b) the person meets the requirements for certification as an occupational therapist registered (OTR) or a certified occupational therapy assistant (COTA), established by the American occupational therapy certification board (AOTCB); or

(7) a person employed as an occupational therapy aide.

History: En. Sec. 4, Ch. 629, L. 1985; amd. Sec. 1, Ch. 325, L. 1989.

37-24-105. Use of superficial physical agent modalities. (1) Except as provided in subsection (2), a person may not use occupational therapy techniques involving superficial physical agent modalities unless the person:

(a) is a licensed occupational therapist under this chapter;

(b) limits application of superficial agent modalities to the shoulder, arm, elbow, forearm, wrist, and hand; and

(c) has successfully completed 16 hours of instruction or training in superficial physical agent modalities and documents competency, as approved by the board, in the following areas:

(i) principles of physics related to specific properties of light, water, temperature, sound, or electricity, as indicated by selected modalities;

(ii) physiological, neurophysiological, and electrophysiological changes that occur as a result of the application of selected modalities;

(iii) the response of normal and abnormal tissue to the application of selected modalities;

(iv) indications and contraindications related to the selection and application of the modality;

(v) guidelines for the treatment or administration of the modality within the philosophical framework of occupational therapy;

(vi) guidelines for educating the patient, including information about risks and benefits of the occupational therapy techniques;

(vii) safety rules and precautions related to the selected modalities;

(viii) methods for documenting the effectiveness and immediate and long-term effects of treatment in relation to task-oriented activities; and

(ix) characteristics of and guidelines for the use of therapy equipment, including safe operation, adjustment, and care and maintenance of the equipment.

(2) A certified occupational therapy assistant who works under the direct supervision of a qualified occupational therapist may apply superficial physical agent modalities to the shoulder, arm, elbow, forearm, wrist, and hand.

History: En. Sec. 2, Ch. 297, L. 1993.

37-24-106. Use of sound and electrical physical agent modalities. A person may not utilize occupational therapy techniques involving sound or electrical physical agent modality devices unless the person:

(1) is licensed under this chapter;

(2) limits application of sound and electrical physical agent modalities to the elbow, forearm, wrist, or hand to restore and enhance hand function; and

(3) (a) provides to the board documentation of certification by the hand certification commission, inc., and has successfully completed 40 hours of instruction or training in sound and electrical physical agent modality devices and documents competency, as approved by the board, in the areas provided in 37-24-105(1)(c); or

(b) has successfully completed 100 hours of instruction or training in sound and electrical physical agent modality devices and documents competency, as approved by the board, in the areas provided in 37-24-105(1)(c).

History: En. Sec. 3, Ch. 297, L. 1993.

Part 2

Board of Occupational Therapy Practice

Part Cross-References

Right to know, Art. II, sec. 9, Mont. Const.

Oath defined, 1-1-201.

Seal defined, 1-4-201.

Oaths, Title 1, ch. 6.

Open meetings, Title 2, ch. 3, part 2.

Meeting defined, 2-3-202.

Power of agencies to issue subpoenas, 2-4-104.

Adoption and publication of rules, Title 2, ch. 4, part 3.

Power of hearings officer to issue subpoenas, 2-4-611.

Public records, Title 2, ch. 6.

Allocation of boards for administrative purposes, 2-15-121.

Preservation of records, Title 22, ch. 3, part 2.

Subpoenas, Rule 45, M.R.Civ.P. (see Title 25, ch. 20); Title 26, ch. 2, part 1.

Arrest of witness for disobedience of subpoena, 26-2-106, 26-2-107.

Duties of Department, Director, and boards, Title 37, ch. 1, part 1.

Licensing investigation and review — record access, 37-1-135.

Disrupting meeting as disorderly conduct, 45-8-101.

37-24-201. Organization — general rulemaking power — quorum. (1) The board of occupational therapy practice shall meet annually and elect a chairman and a secretary from its members. The board shall hold other meetings when necessary to transact its business.

(2) The board may adopt rules for the conduct of its affairs and the administration of this chapter. Rules adopted by the board may include such rules as are reasonable or necessary for the proper performance of its duties and the regulation of proceedings before it.

(3) Three board members constitute a quorum for the transaction of business.

History: En. Sec. 6, Ch. 629, L. 1985.

37-24-202. Powers and duties of board. (1) The board shall:

(a) administer, coordinate, and enforce the provisions of this chapter;

(b) evaluate the qualifications of applicants for licensure under this chapter and approve and supervise the examination of applicants;

(c) adopt rules relating to professional licensure and the establishment of ethical standards of practice under this chapter;

(d) conduct hearings and keep records and minutes as the board considers necessary to carry out its functions; and

(e) adopt a seal by which the board shall authenticate its proceedings.

(2) A copy of the proceedings, records, or acts of the board, signed by the presiding officer or secretary of the board and stamped with the seal, is prima facie evidence of the validity of the document.

(3) The department may employ persons it considers necessary to carry out the provisions of this chapter.

History: En. Sec. 7, Ch. 629, L. 1985; amd. Sec. 79, Ch. 429, L. 1995.

37-24-203. Compensation and expenses. Each board member is entitled to compensation and travel expenses as provided in 37-1-133.

History: En. Sec. 8, Ch. 629, L. 1985.

Part 3
Licensing

Part Cross-References

Licensing to follow contested case procedure, 2-4-631.

Suspension of license fees for persons in military service, 10-1-605.

Recognition of out-of-state licenses during disaster or emergency, 10-3-204.

Duty of Department to administer and grade examinations, 37-1-101.

Duty of Board to adopt and enforce licensing and certification rules, 37-1-131.

Licensing boards to establish fees commensurate with costs, 37-1-134.

Licensing investigation and review — record access, 37-1-135.

Grounds for disciplinary action as grounds for license denial — conditions to new licenses, 37-1-137.

Licensure of criminal offenders, Title 37, ch. 1, part 2.

Nondiscrimination in licensing, 49-3-204.

37-24-301. License required. (1) (a) No person may hold himself out as an occupational therapist or as being able to practice occupational therapy or able to render occupational therapy services in this state unless he is licensed as an occupational therapist under the provisions of this chapter.

(b) No person may practice or hold himself out as an occupational therapy assistant in this state unless he is licensed as an occupational therapist or as an occupational therapy assistant.

(2) Only an individual may be licensed under this chapter.

History: En. Sec. 9, Ch. 629, L. 1985.

37-24-302. Application. An applicant applying for licensure as an occupational therapist or as an occupational therapy assistant shall file a written application on forms prescribed by the board, showing that the applicant meets the requirements of 37-24-303(1)(a) through (1)(c).

History: En. Sec. 10, Ch. 629, L. 1985; amd. Sec. 2, Ch. 325, L. 1989.

37-24-303. Requirements for licensure. (1) To be eligible for licensure by the board as an occupational therapist or an occupational therapy assistant, the applicant shall:

(a) present evidence of having successfully completed the academic requirements of an educational program recognized by the board for the license sought;

(b) submit evidence of having successfully completed a period of supervised fieldwork experience arranged by the recognized educational institution where he completed the academic requirements or by a nationally recognized professional association;

(c) submit evidence of having been certified by the American occupational therapy certification board (AOTCB); and

(d) pass an examination as provided for in 37-24-304.

(2) The supervised fieldwork experience requirement for an occupational therapist is a minimum of 6 months. The supervised fieldwork experience requirement for an occupational therapy assistant is a minimum of 2 months.

History: En. Sec. 11, Ch. 629, L. 1985; amd. Sec. 3, Ch. 325, L. 1989.

37-24-304. Examination. (1) A person who satisfies the educational and experience requirements of 37-24-303 may apply for examination in the manner prescribed by the board. The application must be accompanied by the nonrefundable fee prescribed by the board under 37-24-310. An unsuccessful examinee may apply for reexamination upon payment of the prescribed fee.

(2) The board shall adopt a written examination for occupational therapists and a written examination for occupational therapy assistants and establish standards for acceptable performance.

(3) Examinations shall be given at least twice each year at a time and place and under such supervision as the board may determine. The board shall give notice of the examinations in accordance with rules adopted by the board.

(4) Examinees may obtain their scores and review their examinations in accordance with rules established by the board.

History: En. Sec. 12, Ch. 629, L. 1985.

37-24-305. Repealed. Sec. 128, Ch. 429, L. 1995.

History: En. Sec. 13, Ch. 629, L. 1985; amd. Sec. 4, Ch. 325, L. 1989.

37-24-306. Issuance of license. (1) The board shall issue a license to any person who meets the requirements of this chapter upon payment of the prescribed license fee.

(2) The license must include the dates of issuance and expiration.

History: En. Sec. 14, Ch. 629, L. 1985.

37-24-307. Repealed. Sec. 128, Ch. 429, L. 1995.

History: En. Sec. 15, Ch. 629, L. 1985.

37-24-308. Renewal of license. Each license issued under this chapter is subject to annual renewal on the date set by department rule upon the payment of a renewal fee and expires unless renewed in the manner prescribed by the rules of the board. The board may provide for the late renewal of a license upon the payment of a late fee in accordance with its rules, but a late renewal of a license may not be granted more than 5 years after its expiration.

History: En. Sec. 16, Ch. 629, L. 1985; amd. Sec. 80, Ch. 429, L. 1995.

37-24-309. Repealed. Sec. 128, Ch. 429, L. 1995.

History: En. Sec. 17, Ch. 629, L. 1985; amd. Sec. 5, Ch. 325, L. 1989.

37-24-310. Fees. (1) The board may adopt fees in accordance with 37-1-134 for:

(a) applications for licensure;

(b) examination;

(c) initial license issuance;

(d) license renewal;

(e) late license renewal; and

(f) limited permit issuance.

(2) All fees collected by the board under this section must be deposited in the state special revenue fund for the use of the board in administering this act, subject to 37-1-101(6).

History: En. Sec. 18, Ch. 629, L. 1985.

37-24-311. Penalty. A person convicted of violating this chapter is guilty of a misdemeanor and shall be fined an amount not to exceed $500.

History: En. Sec. 19, Ch. 629, L. 1985.

CHAPTER 25

NUTRITIONISTS

Part 1 — General

37-25-101. Legislative finding and purpose.
37-25-102. Definitions.

Part 2 — Board of Medical Examiners

37-25-201. Powers and duties of the board.

Part 3 — Licensing

37-25-301. Scope of dietetic-nutrition practice.
37-25-302. Licensing requirements.
37-25-303. Issuance of license — effective date.
37-25-304. Exemptions from licensure requirements.
37-25-305. Representation to public as nutritionist — limitation on use of title.
37-25-306. Repealed.
37-25-307. Renewal of license.
37-25-308. Grounds for revocation, suspension, or refusal to renew license.

Part 1

General

Part Cross-References

Montana Access to Food and Nutrition Act, Title 50, ch. 49, part 1.

37-25-101. Legislative finding and purpose. The legislature finds and declares that the practice of nutrition assessment and counseling affects the public health, safety, and welfare. It is the purpose of this chapter to provide for the licensing and regulation of nutritionists in order to protect the public health, safety, and welfare, to ensure that nutritional services of high quality are available to the people of Montana, and to provide a means of identifying those qualified to practice nutrition.

History: En. Sec. 1, Ch. 529, L. 1987.

37-25-102. Definitions. In this chapter, unless the context requires otherwise, the following definitions apply:

(1) "Accredited" means accredited through the council on postsecondary accreditation and the U.S. department of education.

(2) "Board" means the board of medical examiners.

(3) "Commission" means the commission on dietetic registration, which is a member of the national commission for health certifying agencies.

(4) "Dietetic-nutrition practice" or "dietetics-nutrition" is the integration and application of principles derived from the sciences of nutrition, biochemistry, physiology, and food management and from the behavioral and social sciences to achieve and maintain health. The primary function of dietetic-nutrition practice is to provide nutrition assessment and nutrition counseling.

(5) "General nutritional information" means information on:

(a) principles of good nutrition;

(b) foods to be included in a daily diet;

(c) the essential nutrients needed by the body;

(d) recommended amounts of these nutrients;

(e) the action of these nutrients on the body;

(f) the effects of deficiencies in these nutrients; or

(g) foods and supplements that are good sources of essential nutrients.

(6) "Licensed nutritionist" means a nutritionist licensed under this chapter.

(7) "Nutrition assessment" means the evaluation of nutritional needs of individuals and groups based on appropriate biochemical, anthropometric, physical, and dietary data in order to determine nutrient needs and to recommend appropriate nutritional intake, including both enteral and parenteral nutrition.

(8) "Nutrition counseling" means providing assistance and advice to individuals or groups in the selection of food and other sources of nutrients to achieve appropriate nutritional intake, based on:

(a) the nutrition assessment;

(b) the composition of food and other sources of nutrients; and

(c) meal preparation consistent with cultural background and socioeconomic status.

(9) "Nutritionist" means:

(a) a person licensed under this chapter; or

(b) a person who has satisfactorily completed a baccalaureate and master's or a doctoral degree in the field of dietetics, food and nutrition, or public health nutrition conferred by an accredited college or university.

History: En. Sec. 2, Ch. 529, L. 1987; amd. Sec. 48, Ch. 83, L. 1989.

Part 2
Board of Medical Examiners

Part Cross-References

Right to know, Art. II, sec. 9, Mont. Const.

Oath defined, 1-1-201.

Seal defined, 1-4-201.

Oaths, Title 1, ch. 6.

Open meetings, Title 2, ch. 3, part 2.

Meeting defined, 2-3-202.

Power of agencies to issue subpoenas, 2-4-104.

Adoption and publication of rules, Title 2, ch. 4, part 3.

Power of hearings officer to issue subpoenas, 2-4-611.

Public records, Title 2, ch. 6.

Allocation of boards for administrative purposes, 2-15-121.

Preservation of records, Title 22, ch. 3, part 2.

Subpoenas, Rule 45, M.R.Civ.P. (see Title 25, ch. 20); Title 26, ch. 2, part 1.

Arrest of witness for disobedience of subpoena, 26-2-106, 26-2-107.

Duties of Department, Director, and boards, Title 37, ch. 1, part 1.

Licensing investigation and review — record access, 37-1-135.

Disrupting meeting as disorderly conduct, 45-8-101.

37-25-201. Powers and duties of the board. In addition to all other powers and duties conferred and imposed on the board by this chapter, the board shall:

(1) examine qualified applicants for a license to practice dietetics-nutrition, issue licenses to applicants who meet the requirements established by this chapter, and renew licenses as provided in 37-25-307; and

(2) adopt rules that set professional, practice, and ethical standards for licensed nutritionists and such other rules as may be necessary for the administration of this chapter.

History: En. Sec. 10, Ch. 529, L. 1987.

Part 3

Licensing

Part Cross-References

Contested case procedure, Title 2, ch. 4, part 6.

Licensing to follow contested case procedure, 2-4-631.

Duty of Department to investigate unprofessional conduct, 37-1-101.

Reporting disciplinary actions against licensees, 37-1-105.

Duties of Director in investigation of unethical conduct, 37-1-121.

Duty of Board to adopt and enforce licensing and certification rules and rules on conduct, 37-1-131.

Licensing boards to establish fees commensurate with costs, 37-1-134.

Licensing investigation and review — record access, 37-1-135.

Disciplinary authority of boards — injunctions, 37-1-136.

Grounds for disciplinary action as grounds for license denial — conditions to new licenses, 37-1-137.

Licensure of criminal offenders, Title 37, ch. 1, part 2.

Nondiscrimination in licensing, 49-3-204.

37-25-301. Scope of dietetic-nutrition practice. Only a nutritionist can provide the following services:

(1) assessing the nutrition needs of individuals and groups and determining resources and constraints in the practice setting;

(2) establishing priorities and objectives that meet nutritive needs and are consistent with available resources and constraints;

(3) providing nutrition counseling for any individual;

(4) developing, implementing, and managing nutrition care systems; and

(5) evaluating, adjusting, and maintaining appropriate standards of quality in food and nutrition services.

History: En. Sec. 3, Ch. 529, L. 1987.

37-25-302. Licensing requirements. (1) An applicant for licensure as a licensed nutritionist shall file a written application with the board and demonstrate to the board that he is registered by the commission.

(2) An applicant shall pay an application fee, set by the board.

History: En. Sec. 4, Ch. 529, L. 1987.

37-25-303. Issuance of license — effective date. (1) Upon successful completion of the requirements in 37-25-302, an applicant must be issued a license attesting to the date and fact of licensure.

(2) The license is effective on the date of issuance and expires 1 year after that date.

History: En. Sec. 5, Ch. 529, L. 1987.

37-25-304. Exemptions from licensure requirements. This chapter does not prevent:

(1) a student or intern in an approved academic program or a paraprofessional with approved dietetic-nutrition training from engaging in the practice of dietetics-nutrition if a licensed nutritionist is available for direct supervision and if the student, intern, or paraprofessional does not represent himself to the public as a nutritionist;

(2) a licensed physician or nurse from engaging in the practice of dietetics-nutrition when it is incidental to the practice of his profession;

(3) a person licensed under any other law from engaging in the profession or business for which he is licensed if he does not represent himself to the public as a nutritionist;

(4) an educator or advisor employed by a nonprofit agency acceptable to the board or by an accredited degree-granting institution or an accredited elementary or secondary school from engaging in an activity within the scope of his salaried position;

(5) a person employed by or under contract with an agency of the state or federal government from discharging his official duty if he does not represent himself to the public as a nutritionist;

(6) a person from furnishing general nutritional information, including dissemination of literature, as to the use of food, food materials, or dietary supplements or from engaging in the explanation as to the use of foods or food products, including dietary supplements, in connection with the marketing and distribution of those products if he does not represent himself to the public as a nutritionist;

(7) a person from furnishing general nutrition information or disseminating literature if he does not represent himself to the public as a dietitian or a nutritionist; or

(8) a person from fulfilling state or federal regulations governing the delivery or provision of nutritional health services to hospitals or long-term care facilities if he does not represent himself to the public as a nutritionist.

History: En. Sec. 6, Ch. 529, L. 1987.

37-25-305. Representation to public as nutritionist — limitation on use of title. A person may not represent to the public by any title, sign, or advertisement or description of services that the person is a nutritionist or a licensed nutritionist unless the person has been licensed under this chapter or has met the requirements of 37-25-102(9)(b).

History: En. Sec. 7, Ch. 529, L. 1987; amd. Sec. 157, Ch. 42, L. 1997.

37-25-306. Repealed. Sec. 128, Ch. 429, L. 1995.

History: En. Sec. 8, Ch. 529, L. 1987.

37-25-307. Renewal of license. (1) An application for renewal of license must be made for a period and on a date set by the department.

(2) A renewal license must be issued when the applicant submits proof that requirements for continued licensure have been met and pays a renewal fee set by the board commensurate with costs.

(3) An additional fee may be imposed on applications for renewal received by the board more than 30 days after the license renewal date.

History: **En. Sec. 9, Ch. 529, L. 1987; amd. Sec. 1, Ch. 255, L. 1991; amd. Sec. 81, Ch. 429, L. 1995; amd. Sec. 31, Ch. 492, L. 1997.**

37-25-308. Grounds for revocation, suspension, or refusal to renew license. The board may impose a fine or probationary conditions, suspend or revoke a license, or deny or refuse to renew a license if the licensee or applicant has:

(1) obtained a license by means of fraud, misrepresentation, or concealment of material facts;

(2) engaged in unprofessional conduct or gross incompetence as defined by rule of the board;

(3) been convicted of a crime of moral turpitude or a felony related to the practice of dietetics-nutrition; or

(4) violated an order or rule of the board.

History: **En. Sec. 11, Ch. 529, L. 1987.**

CHAPTER 26

NATUROPATHIC PHYSICIANS

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37-26-102. Legislative finding — purpose.
37-26-103. Definitions.

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37-26-302. Exemptions.
37-26-303. Public health duties of naturopathic physicians.
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Part 4 — Licensing

37-26-401. License required — titles restricted — enjoining unlawful practice.
37-26-402. Qualifications for licensure.
37-26-403. Application for licensure — examination — temporary license.
37-26-404. Repealed.
37-26-405. Issuance of license.
37-26-406 and 37-26-407 reserved.
37-26-408. Repealed.
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37-26-410. Repealed.
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37-26-414. Enforcement — penalty.

Chapter Cross-References

Contested case procedure, Title 2, ch. 4, part 6.

Licensing to follow contested case procedure, 2-4-631.

Duty of Department to investigate unprofessional conduct, 37-1-101.

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Licensing investigation and review — record access, 37-1-135.

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Grounds for disciplinary action as grounds for license denial — conditions to new licenses, 37-1-137.

Licensure of criminal offenders, Title 37, ch. 1, part 2.

Nondiscrimination in licensing, 49-3-204.

Part 1

General

37-26-101. Short title. This chapter may be cited as the "Naturopathic Health Care Practice Act".

History: En. Sec. 1, Ch. 306, L. 1991.

37-26-102. Legislative finding — purpose. (1) The legislature finds that a significant number of Montanans choose naturopathic medicine for their health care needs and declares that naturopathic medicine is a distinct health care profession that affects the public health, safety, and welfare and contributes to public freedom of choice in health care.

(2) The purpose of this chapter is to provide standards for the licensing and regulation of naturopathic physicians in order to protect the public health, safety, and welfare; to ensure that naturopathic health care by qualified naturopathic physicians is available to the people of Montana; and to provide a means of identifying qualified naturopathic physicians.

History: En. Sec. 2, Ch. 306, L. 1991.

37-26-103. Definitions. As used in this chapter, the following definitions apply:

(1) "Approved naturopathic medical college" means a college and program granting the degree of doctor of naturopathy or naturopathic medicine that:

(a) is accredited by the council on naturopathic medical education or another accrediting agency recognized by the United States department of education;

(b) has the status of candidate for accreditation with the accrediting agency; or

(c) has been approved by the board after an investigation that determines that the college or program meets education standards equivalent to those established by the accrediting agency and complies with the board's rules, which must require as a minimum a 4-year, full-time resident program of academic and clinical study.

(2) "Board" means the alternative health care board established in 2-15-1840.

(3) "Department" means the department of commerce provided for in 2-15-1801.

(4) "Homeopathic preparations" means substances and drugs prepared according to the official Homeopathic Pharmacopoeia of the United States, which is the standard homeopathic text recognized by the United States food and drug administration.

(5) (a) "Minor surgery" means the use of:

(i) operative, electrical, or other methods for the surgical repair and care incidental to superficial lacerations and abrasions, superficial lesions, and the removal of foreign bodies located in the superficial tissues; and

(ii) antiseptics and local anesthetics in connection with the methods.

(b) Minor surgery does not include general or spinal anesthetics, major surgery, surgery of the body cavities, or specialized surgeries, such as plastic surgery, surgery involving the eyes, or surgery involving tendons, ligaments, nerves, or blood vessels.

(6) "Naturopathic childbirth attendance" means the specialty practice of natural childbirth by naturopathic physicians that includes the use of natural therapeutic substances, ophthalmic antibiotics, oxytocin (pitocin), and minor surgery, as set by board rules. The term does not include a forceps delivery, general or spinal anesthesia, or a cesarean section.

(7) "Naturopathic medicine", "naturopathic health care", or "naturopathy" means a system of primary health care practiced by naturopathic physicians for the prevention, diagnosis, and treatment of human health conditions, injury, and disease. Its purpose is to promote or restore health by the support and stimulation of the individual's inherent self-healing processes. This is accomplished through education of the patient by a naturopathic physician and through the use of natural therapies and therapeutic substances.

(8) "Naturopathic physical applications" means the therapeutic use by naturopathic physicians of the actions or devices of electrical muscle stimulation, galvanic, diathermy, ultrasound, ultraviolet light, constitutional hydrotherapy, and naturopathic manipulative therapy.

(9) "Naturopathic physician" means a person authorized and licensed to practice naturopathic health care under this chapter.

(10) "Topical drugs" means topical analgesics, anesthetics, antiseptics, scabicides, antifungals, and antibacterials.

History: En. Sec. 3, Ch. 306, L. 1991; amd. sec. 3(2), Ch. 524, L. 1991.

Part 2

Alternative Health Care Board

37-26-201. Powers and duties of board. The board shall:

(1) adopt rules necessary or proper to administer and enforce this chapter;

(2) adopt rules that specify the scope of practice of naturopathic medicine stated in 37-26-301, that are consistent with the definition of naturopathic medicine provided in 37-26-103, and that are consistent with the education provided by approved naturopathic medical colleges;

(3) adopt rules prescribing the time, place, content, and passing requirements of the licensure examination, which may be composed of part or all of the national naturopathic physicians licensing examination;

(4) adopt rules that endorse equivalent licensure examinations of another state or territory of the United States, the District of Columbia, or a foreign country and that may include licensure by reciprocity;

(5) adopt rules that set nonrefundable fees, commensurate with costs, for application, examination, licensure, and other administrative services;

(6) approve naturopathic medical colleges as defined in 37-26-103;

(7) issue certificates of specialty practice;

(8) adopt rules that, in the discretion of the board, appropriately restrict licenses to a limited scope of practice of naturopathic medicine, which may exclude the use of minor surgery allowed under 37-26-301; and

(9) adopt rules that contain the natural substance formulary list created by the alternative health care formulary committee provided for in 37-26-301.

History: En. Sec. 10, Ch. 306, L. 1991; amd. Sec. 3, Ch. 314, L. 1993; amd. Sec. 82, Ch. 429, L. 1995; amd. Sec. 23, Ch. 481, L. 1997.

37-26-202. Board meetings. (1) The board shall meet at least once annually.

(2) Special meetings may be called by any two board members or the presiding officer.

(3) A majority of the board constitutes a quorum for the transaction of business.

History: En. Sec. 11, Ch. 306, L. 1991; amd. Sec. 4, Ch. 314, L. 1993.

Part 3

Scope of Practice

37-26-301. Practice of naturopathic health care — alternative health care formulary committee. (1) Naturopathic physicians may practice naturopathic medicine as a limited practice of the healing arts as exempted in 37-3-103(1)(n), with the following restrictions. A naturopathic physician may not:

(a) prescribe, dispense, or administer any legend drug, as defined in 50-31-301, except for whole gland thyroid; homeopathic preparations; the natural therapeutic substances, drugs, and therapies described in subsection (2); and oxytocin (pitocin), provided that the naturopathic physician may administer but may not prescribe or dispense oxytocin (pitocin);

(b) administer ionizing radioactive substances for therapeutic purposes;

(c) perform surgical procedures except those minor surgery procedures authorized by this chapter; or

(d) claim to practice any licensed health care profession or system of treatment other than naturopathic medicine unless holding a separate license in that profession.

(2) Naturopathic physicians may prescribe and administer for preventive and therapeutic purposes the following natural therapeutic substances, drugs, and therapies, as well as drugs on the natural substance formulary list provided for in subsection (3):

(a) food, food extracts, vitamins, minerals, enzymes, whole gland thyroid, botanical medicines, homeopathic preparations, and oxytocin (pitocin);

(b) topical drugs, health care counseling, nutritional counseling and dietary therapy, naturopathic physical applications, therapeutic devices, and nonprescription drugs; and

(c) barrier devices for contraception, naturopathic childbirth attendance, and minor surgery.

(3) A five-member alternative health care formulary committee appointed by the board shall establish a natural substance formulary list. The committee consists of a licensed pharmacist plus four members of the board, two of whom must be licensed naturopathic physicians, one who must be a licensed medical doctor, and one who must be a public member. The list may not go beyond the scope of substances covered by approved naturopathic college curricula or continuing education and must be reviewed annually by the committee. Changes to the list that are recommended by the committee and accepted by the board must be published as administrative rules.

(4) Naturopathic physicians may perform or order for diagnostic purposes a physical or orificial examination, ultrasound, phlebotomy, clinical laboratory test or examination, physiological function test, and any other noninvasive diagnostic procedure commonly used by physicians in general practice and as authorized by 37-26-201(2).

(5) Except as provided by this subsection, it is unlawful for a naturopath to engage, directly or indirectly, in the dispensing of any drugs that a naturopath is authorized to prescribe by subsection (2). If the place where a naturopath maintains an office for the practice of naturopathy is more than 10 miles from a place of business that sells and dispenses the drugs a naturopath may prescribe under subsection (2), then, to the extent the drugs are not available within 10 miles of the naturopath's office, the naturopath may sell the drugs that are unavailable.

History: En. Sec. 4, Ch. 306, L. 1991; amd. Sec. 5, Ch. 314, L. 1993; amd. Sec. 24, Ch. 481, L. 1997.

37-26-302. Exemptions. (1) This chapter recognizes that many of the therapies used by naturopathic physicians, such as the use of nutritional supplements, herbs, foods, homeopathic preparations, and such physical forces as heat, cold, water, touch, and light, are not the exclusive privilege of naturopathic physicians, and their use, practice, prescription, or administration by persons not licensed to practice naturopathic medicine is not prohibited by this chapter.

(2) This chapter does not restrict or apply to the scope of practice of any other professions licensed, certified, or registered under the laws of this state.

History: En. Sec. 6, Ch. 306, L. 1991.

37-26-303. Public health duties of naturopathic physicians. Naturopathic physicians have the same authority and responsibility as other licensed physicians with regard to public health laws, reportable diseases and conditions, communicable disease control and prevention, recording of vital statistics, health and physical examinations, and local boards of health, except that the authority and responsibility are limited to activities consistent with the scope of practice described in this chapter.

History: En. Sec. 8, Ch. 306, L. 1991.

37-26-304. Naturopathic childbirth attendance — certification for specialty practice — requirements. (1) A naturopathic physician may not practice naturopathic childbirth attendance without first obtaining from the board a certificate of specialty practice. The board shall adopt rules setting forth the requirements to be met in order to certify naturopathic physicians for the specialty practice of naturopathic childbirth attendance.

(2) In order to be certified for the specialty practice of naturopathic childbirth attendance, a naturopathic physician shall:

(a) pass either a national standardized supplemental examination in naturopathic childbirth attendance provided by the national naturopathic profession licensing organization or another specialty examination approved by the board;

(b) complete a minimum of 100 hours in any one or in any combination of the following upon approval by the board:

(i) course work in naturopathic childbirth attendance;

(ii) an internship in naturopathic childbirth attendance; or

(iii) a preceptorship in naturopathic childbirth attendance; and

(c) have assisted in a minimum of 50 supervised births, including prenatal and postnatal care, under the direct supervision of a licensed naturopathic, medical, or osteopathic physician with specialty training in obstetrics or natural childbirth attendance. The 50 supervised births required under this subsection (c) must include 25 births that document the naturopathic physician as the primary birth attendant.

History: **En. Sec. 7, Ch. 306, L. 1991.**

Part 4
Licensing

37-26-401. License required — titles restricted — enjoining unlawful practice. (1) Except as provided in 37-26-302, a person may not practice naturopathy without a valid and current license issued by the board as provided in this chapter.

(2) (a) A naturopathic physician licensed under this chapter may use the prefix “Dr.” or “doctor” as a title.

(b) Only a naturopathic physician licensed under this chapter may use any or all of the following titles or terms:

(i) “doctor of naturopathy”, “doctor of naturopathic medicine”, “naturopath”, “naturopathic physician”, and the abbreviation “N.D.” when used to imply any of these titles; or

(ii) “naturopathic medicine”, “naturopathic health care”, “naturopathic”, and “naturopathy”.

(c) The titles and terms in subsection (2)(b) identify naturopathic physicians and are restricted to describing and identifying licensed practitioners and their practice. A person who uses these titles and terms to represent himself or his practice to the public without being licensed pursuant to this chapter is in violation of this chapter.

(3) A violation of this chapter may be enjoined by the district court on petition by the board.

History: **En. Sec. 5, Ch. 306, L. 1991.**

37-26-402. Qualifications for licensure. A person is qualified to be licensed to practice naturopathic medicine in Montana if he:

(1) is of good moral character as determined by the board;
(2) is a graduate of an approved naturopathic medical college; and
(3) has passed an examination prescribed or endorsed by the board for the licensure of naturopathic physicians.

History: En. Sec. 12, Ch. 306, L. 1991.

37-26-403. Application for licensure — examination — temporary license. (1) A person who desires a license to practice naturopathic medicine in Montana shall apply to the department in the manner and form prescribed by the board. The application must be accompanied by the license fees, the application fees, and the documents, affidavits, and certificates necessary to establish that the applicant possesses the qualifications prescribed by 37-26-402. The burden of proof is on the applicant, but the department may make an independent investigation to determine whether the applicant possesses the necessary qualifications and whether the applicant has committed unprofessional conduct that would be basis for licensure denial. At the board's request, the applicant shall provide necessary authorizations for the release of records and information pertinent to the department's investigation.

(2) A person who applies for licensure but who has not passed a licensure examination prescribed or endorsed by the board shall apply to the board for authorization to take the prescribed licensure examination. The application for examination must be accompanied by the examination fee. If the board finds that all other qualifications for licensure except that of examination have been met, the board shall authorize the applicant to take the licensure examination.

History: En. Sec. 13, Ch. 306, L. 1991; amd. Sec. 83, Ch. 429, L. 1995.

37-26-404. Repealed. Sec. 128, Ch. 429, L. 1995.

History: En. Sec. 14, Ch. 306, L. 1991; amd. Sec. 6, Ch. 314, L. 1993.

37-26-405. Issuance of license. If the board determines that an applicant possesses the qualifications required by 37-26-402, the department shall issue a license to the applicant to practice naturopathic medicine.

History: En. Sec. 15, Ch. 306, L. 1991.

37-26-406 and 37-26-407 reserved.

37-26-408. Repealed. Sec. 128, Ch. 429, L. 1995.

History: En. Sec. 16, Ch. 306, L. 1991.

37-26-409. Repealed. Sec. 128, Ch. 429, L. 1995.

History: En. Sec. 17, Ch. 306, L. 1991.

37-26-410. Repealed. Sec. 128, Ch. 429, L. 1995.

History: En. Sec. 18, Ch. 306, L. 1991.

37-26-411 through 37-26-413 reserved.

37-26-414. Enforcement — penalty. (1) A county attorney shall prosecute a person charged with violation of any of the provisions of this chapter.

(2) A person who violates any of the provisions of this chapter is guilty of a misdemeanor and, upon conviction, is punishable by a fine not exceeding $500 or by imprisonment in the county jail for a term not to exceed 6 months, or both.

History: En. Sec. 19, Ch. 306, L. 1991.

CHAPTER 27

DIRECT-ENTRY MIDWIFERY

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Chapter Cross-References

Limits on liability of health care provider in emergency situations, 27-1-734.

Report of fetal death that occurs outside licensed medical facility, 46-4-114.

Part 1

General

37-27-101. Short title. This chapter may be cited as the "Direct-Entry Midwifery Licensing Act".

History: En. Sec. 1, Ch. 550, L. 1991.

37-27-102. Purpose. The legislature finds and declares that because the practice of direct-entry midwifery affects the lives of the people of this state and because some Montanans may exercise their right to give birth where and with whom they choose, it is the purpose of this chapter to provide for the common good by regulating and ensuring the qualified and professional practice of direct-entry midwifery.

History: En. Sec. 2, Ch. 550, L. 1991.

37-27-103. Definitions. As used in this chapter, the following definitions apply:

(1) "Apprentice" means a person who is working under the supervision of a licensed direct-entry midwife and is seeking licensure as a direct-entry midwife under this chapter.

(2) "Board" means the alternative health care board established in 2-15-1840.

(3) "Continuous care" means care provided for one person from the initial history-taking interview through monthly prenatal, intrapartum, and postpartum periods.

(4) "Direct-entry midwife" means a person who advises, attends, or assists a woman during pregnancy, labor, natural childbirth, or the postpartum period.

(5) "Licensee" means a person authorized by this chapter to practice direct-entry midwifery.

(6) "Postpartum period" means the period up to 6 weeks following birth.

(7) "Practice of direct-entry midwifery" means the advising, attending, or assisting of a woman during pregnancy, labor, natural childbirth, or the postpartum period.

History: En. Sec. 3, Ch. 550, L. 1991; amd. Sec. 3, Ch. 524, L. 1991; amd. Sec. 59, Ch. 10, L. 1993.

37-27-104. Exemptions. This chapter does not limit or regulate the practice of a licensed physician, certified nurse-midwife, or licensed basic or advanced emergency medical technician. The practice of direct-entry midwifery does not constitute the practice of medicine, certified nurse-midwifery, or emergency medical care to the extent that a direct-entry midwife advises, attends, or assists a woman during pregnancy, labor, natural childbirth, or the postpartum period when the pregnancy is not a high-risk pregnancy.

History: En. Sec. 4, Ch. 550, L. 1991.

37-27-105. General powers and duties of board — rulemaking authority. (1) The board shall:

(a) meet at least once annually, and at other times as agreed upon, to elect officers and to perform the duties described in this section; and

(b) administer oaths, take affidavits, summon witnesses, and take testimony as to matters within the scope of the board's duties.

(2) The board shall have the authority to administer and enforce all the powers and duties granted statutorily or adopted administratively.

(3) The board shall adopt rules to administer this chapter. The rules must include but are not limited to:

(a) the development of a license application and examination, criteria for and grading of examinations, and establishment of examination and license fees commensurate with actual costs;

(b) the issuance of a provisional license to midwives who filed the affidavit required by section 2, Chapter 493, Laws of 1989;

(c) the establishment of criteria for minimum educational, apprenticeship, and clinical requirements that, at a minimum, meet the standards established in 37-27-201;

(d) the development of eligibility criteria for client screening by direct-entry midwives in order to achieve the goal of providing midwifery services to women during low-risk pregnancies;

(e) the development of procedures for the issuance, renewal, suspension, and revocation of licenses;

(f) the adoption of disciplinary standards for licensees;

(g) the development of standardized informed consent and reporting forms;

(h) the adoption of ethical standards for licensed direct-entry midwives;

(i) the adoption of supporting documentation requirements for primary birth attendants; and

(j) the establishment of criteria limiting an apprenticeship that, at a minimum, meets the standards established in 37-27-201.

History: En. Sec. 6, Ch. 550, L. 1991; amd. Sec. 84, Ch. 429, L. 1995.

37-27-106 through 37-27-110 reserved.

37-27-111. Parents' rights regarding birth of baby. Except as otherwise provided by law, parents have a right to give birth where and with whom they choose.

History: En. Sec. 1, Ch. 493, L. 1989. Sec. 37-75-101, MCA 1989; redes. 37-27-111 by Code Commissioner, 1991.

Part 2

Licensure

37-27-201. Qualifications of applicants for license — educational and practical experience requirements. To be eligible for a license as a direct-entry midwife, an applicant:

(1) must possess a high school diploma or its equivalent;

(2) must be of good moral character and be at least 21 years of age;

(3) shall satisfactorily complete educational requirements in pregnancy and natural childbirth, approved by the board, which must include but are not limited to the following:

(a) provision of care during the antepartum, intrapartum, postpartum, and newborn period;

(b) parenting education for prepared childbirth;

(c) observation skills;

(d) aseptic techniques;

(e) management of birth and immediate care of the mother and the newborn;

(f) recognition of early signs of possible abnormalities;

(g) recognition and management of emergency situations;

(h) special requirements for home birth;

(i) intramuscular and subcutaneous injections;

(j) suturing necessary for episiotomy repair;

(k) recognition of communicable diseases affecting the pregnancy, birth, newborn, and postpartum periods;

(l) assessment skills; and

(m) the use and administration of drugs authorized in 37-27-302;

(4) shall acquire practical experience, which may be attained in a home, clinic, or hospital setting. Practical experience attained in a hospital does not constitute training or supervision by the hospital, nor may a hospital be required to provide practical experience. At a minimum, this experience must include the following types and numbers of experiences acquired through an apprenticeship or other supervisory setting:

(a) provision of 100 prenatal examinations;

(b) observation of 40 births; and

(c) participation as the primary birth attendant at 25 births, 15 of which included continuous care, as evidenced by:

(i) birth certificates from Montana or another state;

(ii) a signed affidavit from the birthing mother; or

(iii) documented records from the person who supervised the births;

(5) shall file documentation with the board that the applicant has been certified by the American heart association or American red cross to perform adult and infant cardiopulmonary resuscitation. Certification must be current at the time of application and remain valid throughout the license period; and

(6) shall file documentation with the board that the applicant has been certified by the American academy of pediatrics or the American heart association to perform neonatal resuscitation. The applicant's certification must be current at the time of application and remain valid throughout the license period.

History: En. Sec. 7, Ch. 550, L. 1991; amd. Sec. 7, Ch. 314, L. 1993; amd. Sec. 14, Ch. 230, L. 1999.

Compiler's Comments

1999 Amendment: Chapter 230 inserted (6) requiring direct-entry midwife applicant to file with board documentation of current certification; and made minor changes in style. Amendment effective October 1, 1999.

37-27-202. Examination — preparation — requirements. (1) An examination for a license to practice direct-entry midwifery must be prepared by a certified nurse-midwife designated by the board in consultation with the physician on the board.

(2) Examinations must be conducted once each year, be fair and impartial, and be sufficiently comprehensive to adequately test the applicant's competence and ability.

(3) In order to be licensed, a person shall attain a passing grade on the examination, as set by the board.

(4) A person who fails to achieve a passing grade on the examination may not engage in the practice of midwifery.

History: En. Sec. 10, Ch. 550, L. 1991; amd. Sec. 8, Ch. 314, L. 1993.

37-27-203. Examination — exemption. (1) Except as provided in subsection (4), an applicant for a license as a direct-entry midwife shall pass a qualifying, written examination, prescribed by the board, that is designed to test knowledge of theory regarding pregnancy and childbirth and to test clinical judgment in midwifery management. If considered necessary, an oral interview may be conducted in addition to the written examination to determine the fitness of the applicant to practice as a direct-entry midwife.

(2) Before an applicant may take the examination, the applicant shall demonstrate to the board that the educational and practical experience requirements in 37-27-201(3) and (4) have been met.

(3) An applicant is exempt from the educational and practical experience requirements of 37-27-201(3) and (4) if the applicant has:

(a) satisfactorily completed the first examination given by the board following July 1, 1991; and

(b) filed supporting documentation, as required by the board by rule, certifying that the applicant has served as the primary birth attendant, providing continuous care at no less than 75 births within the 7 years prior to July 1, 1991, as verified by birth certificates from Montana or another state, a signed affidavit from the birthing mother, or documented records from the midwife.

(4) Upon payment of the license fee established by the board, a nurse-midwife certified pursuant to 37-8-409 is exempt from the requirements of 37-27-201 and this section and may be licensed as a direct-entry midwife.

History: En. Sec. 8, Ch. 550, L. 1991; amd. Sec. 9, Ch. 314, L. 1993.

37-27-204 reserved.

37-27-205. Provisional license — apprentice license. (1) Upon payment of a $200 fee to the department of commerce, the board may grant an apprentice direct-entry midwife license to a person who:

(a) is working under the personal supervision of a licensed direct-entry midwife, a certified nurse-midwife, a licensed physician, or a licensed naturopathic physician who is certified for the specialty practice of naturopathic childbirth attendance; and

(b) is seeking licensure as a direct-entry midwife under this chapter.

(2) An apprentice direct-entry midwife license is valid for a period prescribed by department of commerce rule and must be renewed at an interval established by the department of commerce, with a limit of four renewals.

History: En. Sec. 9, Ch. 550, L. 1991; amd. Sec. 10, Ch. 314, L. 1993; amd. Sec. 32, Ch. 492, L. 1997; amd. Sec. 15, Ch. 230, L. 1999.

Compiler's Comments

1999 Amendment: Chapter 230 deleted former (1) and (2) that read: "(1) Upon payment of a $200 fee to the department, the board may grant a provisional direct-entry midwife license only to a person who filed an affidavit required by section 2, Chapter 493, Laws of 1989.

(2) The provisional license is valid until the issuance of grades for the first examination administered pursuant to 37-27-202"; and made minor changes in style. Amendment effective October 1, 1999.

37-27-206 through 37-27-209 reserved.

37-27-210. Fees. (1) An applicant for a direct-entry midwife license shall, upon submitting an application to the board, pay an application fee set by the board, commensurate with costs.

(2) An applicant required to take an examination shall, before commencement of the examination, pay an examination fee set by the board, commensurate with costs.

(3) Before a license may be issued or renewed, an applicant shall pay a fee set by the board, commensurate with costs.

(4) Subject to 37-1-101(6), money paid for application, examination, license, and license renewal fees must be deposited in the state special revenue fund for use by the board.

(5) Fees are nonrefundable.

History: En. Sec. 13, Ch. 550, L. 1991; amd. Sec. 11, Ch. 314, L. 1993.

37-27-211 reserved.

37-27-212. Title restricted — enjoining unlawful practice. (1) A direct-entry midwife licensed under this chapter may use the term "licensed midwife" or "direct-entry midwife" as a title.

(2) Only a direct-entry midwife licensed under this chapter may use the title "licensed midwife" or "direct-entry midwife".

(3) The terms and titles in subsections (1) and (2) identify direct-entry midwives and are restricted to describing and identifying licensed practitioners and their practice. A person who uses these terms and titles to represent the person or the person's practice to the public without being licensed pursuant to this chapter is in violation of this chapter.

(4) A violation of this chapter may be enjoined by the district court on petition by the board.

History: En. Sec. 12, Ch. 314, L. 1993.

37-27-213. Repealed. Sec. 128, Ch. 429, L. 1995.

History: En. Sec. 14, Ch. 550, L. 1991.

37-27-214 and 37-27-215 reserved.

37-27-216. Repealed. Sec. 128, Ch. 429, L. 1995.

History: En. Sec. 16, Ch. 550, L. 1991.

Part 3
Regulation of Practice

37-27-301. Unlawful to practice without license. It is unlawful for a person to practice direct-entry midwifery in this state without first obtaining a license under this chapter.

History: En. Sec. 15, Ch. 550, L. 1991.

37-27-302. Administration of prescription drugs prohibited — exceptions. A licensed direct-entry midwife may not dispense or administer prescription drugs other than newborn vitamin K (oral or intramuscular preparations), pitocin (intramuscular) postpartum, xylocaine (subcutaneous), and, in accordance with ARM 16.24.215, prophylactic eye agents to newborn infants. These drugs may be administered only if prescribed by a physician.

History: En. Sec. 11, Ch. 550, L. 1991.

37-27-303. Operative and surgical procedures prohibited — exception. A licensed direct-entry midwife may not perform any operative or surgical procedures except for an episiotomy and simple surgical repair of an episiotomy or simple second-degree lacerations.

History: En. Sec. 12, Ch. 550, L. 1991.

37-27-304 through 37-27-309 reserved.

37-27-310. Privileged communications — exceptions. A licensee may not disclose any information acquired from clients during consultation in a professional capacity except:

(1) with the written consent of the client or, in the case of the client's death or mental incapacity, with the written consent of the client's personal representative or guardian;

(2) that the licensee need not treat as confidential a communication otherwise confidential that reveals the contemplation of a crime by the client or any other person or that in the licensee's professional opinion reveals a threat of imminent harm to the client or others;

(3) that if the client is a minor and information acquired by the licensee indicates that the client was the victim of a crime, the licensee may be required to testify fully in relation to the information in any investigation, trial, or other legal proceeding in which the commission of the crime is the subject of inquiry;

(4) that if the client or the client's personal representative or guardian brings an action against a licensee for a claim arising out of the client's interaction with the direct-entry midwife, the client is considered to have waived any privilege;

(5) to the extent that the privilege is otherwise waived by the client;

(6) when the client is seeking emergency medical treatment and the client's history is requested by the attending medical professional; and

(7) as may otherwise be required by law.

History: En. Sec. 17, Ch. 550, L. 1991.

37-27-311. Informed consent. (1) Prior to accepting a woman for care, a licensed direct-entry midwife shall first obtain written, informed consent from the woman.

(2) Informed consent must be evidenced by a written statement, in a form prescribed by the board and signed by the direct-entry midwife and the woman to whom care is to be given, in which the direct-entry midwife certifies that full disclosure has been made and acknowledged by the woman on the following:

(a) the direct-entry midwife's educational background;

(b) the nature and scope of the care to be given, including the possibility of and procedure for transport of the patient to a hospital;

(c) the available alternatives to direct-entry midwifery care;

(d) a description of the risks of home birth, primarily those conditions that may arise during delivery;

(e) the fact that the patient has been advised to consult with a physician at least twice during the pregnancy;

(f) whether the midwifery services provided are located more than 50 miles from the nearest hospital; and

(g) that a health care provider's liability in rendering care or assistance in good faith to a patient of a direct-entry midwife in an emergency situation is limited to damages caused by gross negligence or by willful or wanton acts or omissions.

History: En. Sec. 18, Ch. 550, L. 1991.

37-27-312. Screening procedures. In addition to meeting the eligibility criteria for client screening established by the board pursuant to 37-27-105, a direct-entry midwife shall recommend that patients secure the following services by an appropriate health care provider:

(1) the standard serological test as defined in 50-19-101(2) for women seeking prenatal care;

(2) screening for hepatitis B and, when appropriate, human immunodeficiency virus;

(3) maternal serum alpha-fetoprotein test and ultrasound, upon request;

(4) Rh antibody and glucose screening at 28 weeks' gestation, upon request;

(5) nonstress testing by a fetal monitor of a fetus at greater than 42 ½ weeks' gestation or if other reasons indicate the testing;

(6) screening for phenylketonuria;

(7) Rh screening of the infant for RhoGAM treatment if the mother is Rh negative; and

(8) screening for premature labor and other risk factors.

History: En. Sec. 20, Ch. 550, L. 1991.

37-27-313 and 37-27-314 reserved.

37-27-315. Physician consultation advised. A licensed direct-entry midwife shall advise all women accepted for midwifery care to consult with a physician or certified nurse-midwife at least twice during the pregnancy.

History: En. Sec. 21, Ch. 550, L. 1991.

37-27-316 through 37-27-319 reserved.

37-27-320. Reports — failure to report. (1) A licensed direct-entry midwife shall submit semiannually to the board, on forms supplied by the board, a summary report on each patient who was given care. The report must include vital statistics on each patient and information on the procedures and scope of care administered, including transport of the patient to a hospital and physician referrals, but may not include information disclosing the identity of the patient.

(2) A licensed direct-entry midwife shall report within 72 hours to the board and to the department of public health and human services any maternal, fetal, or neonatal mortality or morbidity in patients for whom care has been given.

(3) Failure of a direct-entry midwife to submit required reports constitutes grounds to deny renewal of a license.

History: En. Sec. 19, Ch. 550, L. 1991; amd. Sec. 63, Ch. 418, L. 1995; amd. Sec. 92, Ch. 546, L. 1995.

37-27-321. Filing of birth certificate. (1) When a birth occurs with a licensed direct-entry midwife in attendance, the direct-entry midwife shall prepare and file a birth certificate, as required by 50-15-221, with the department of public health and human services.

(2) Failure of a direct-entry midwife to prepare and file the birth certificate constitutes grounds for the suspension or revocation of a license granted under this chapter.

History: En. Sec. 22, Ch. 550, L. 1991; amd. Sec. 64, Ch. 418, L. 1995; amd. Sec. 1, Ch. 515, L. 1995; amd. Sec. 93, Ch. 546, L. 1995.

37-27-322 through 37-27-324 reserved.

37-27-325. Violation — penalties — injunction — manner of charging violation. (1) A person who violates any provision of this chapter or any rule adopted pursuant to this chapter is guilty of a misdemeanor and is punishable by a fine not to exceed $500, by imprisonment in the county jail for a term of not more than 6 months, or both.

(2) Notwithstanding any other provisions of this chapter, the board may maintain an action to enjoin a person from engaging in the practice of direct-entry midwifery until a license to practice direct-entry midwifery is obtained. A person who has been enjoined and who violates the injunction is punishable for contempt of court. The injunction does not relieve the person practicing direct-entry midwifery without a license from criminal prosecution. The remedy by injunction is in addition to remedies provided for criminal prosecution of the offender. In charging a person in a complaint for injunction or in an affidavit, information, or indictment with a violation of law by practicing direct-entry midwifery without a license, it is sufficient to charge that the person did, on a certain day and in a certain county, engage in the practice of direct-entry midwifery while not having a license to do so, without averring further or more particular facts concerning the violation.

History: En. Sec. 23, Ch. 550, L. 1991.

CHAPTER 28

RESPIRATORY CARE PRACTITIONERS

Part 1 — General

37-28-101. Findings — purpose.
37-28-102. Definitions.
37-28-103. Board meetings — procedure — seal.
37-28-104. Board powers and duties.

Part 2 — Licensure

37-28-201. License required — exceptions — respiratory care not the practice of medicine.
37-28-202. Licensing requirements — examination — fees.
37-28-203. Renewal of license — application and fee.
37-28-204 and 37-28-205 reserved.
37-28-206. Repealed.
37-28-207 through 37-28-209 reserved.
37-28-210. Repealed.

Part 3 — Miscellaneous

37-28-301. Repealed.
37-28-302. Penalty.
37-28-303 and 37-28-304 reserved.
37-28-305. Deposit of fees.

Part 1
General

37-28-101. Findings — purpose. The legislature finds and declares that the practice of respiratory care in the state affects the public health, safety, and welfare. To protect the public from the unqualified practice of respiratory care or unprofessional conduct by qualified practitioners, respiratory care is subject to regulation and control. The purpose of this chapter is to regulate the practice of respiratory care. The legislature recognizes that the practice of respiratory care is a dynamic and changing art and science that is continually evolving to include new ideas and more sophisticated techniques in patient care.

History: En. Sec. 1, Ch. 532, L. 1991.

37-28-102. Definitions. As used in this chapter, the following definitions apply:

(1) "Board" means the board of respiratory care practitioners established in 2-15-1860.

(2) "Qualified medical direction" means the direction of:

(a) a medical director of an inpatient or outpatient respiratory care service, a respiratory care department, or a home-care agency; or

(b) a licensed physician with a special interest and knowledge about the diagnosis and treatment of respiratory problems.

(3) (a) "Respiratory care" means the care provided by a member of the allied health profession responsible for the treatment, management, diagnostic testing, and control of patients with deficiencies and abnormalities associated with the cardiopulmonary system. The term includes but is not limited to:

(i) administration of pharmacological, diagnostic, and therapeutic agents related to respiratory care procedures that are necessary to implement a treatment, disease prevention, pulmonary rehabilitative, or diagnostic regimen prescribed by a physician;

(ii) transcription and implementation of the written or verbal orders of a physician regarding the practice of respiratory care;

(iii) observation and monitoring of a patient's signs and symptoms, general behavior, and physical response to respiratory care treatment and diagnostic testing, including determination of abnormal characteristics;

(iv) implementation of respiratory care protocols pursuant to a prescription by a physician; and

(v) initiation of emergency procedures prescribed by board rules.

(b) Respiratory care is not limited to a hospital setting but must be performed pursuant to a physician's order and under qualified medical direction. The term includes inhalation and respiratory therapy.

(4) "Respiratory care practitioner" means a person who has the knowledge and skill necessary to administer respiratory care and who is licensed under the provisions of part 2 of this chapter.

(5) "Student respiratory care practitioner" means a person:

(a) enrolled in a respiratory care educational program recognized by the joint review committee for respiratory therapy education and the American medical association's committee on allied health education and accreditation, or their successors;

(b) permitted to provide respiratory care under clinical supervision; and

(c) identified as a student respiratory care practitioner or "SRCP".

History: En. Sec. 2, Ch. 532, L. 1991.

37-28-103. Board meetings — procedure — seal. (1) The board shall meet at least once a year and shall elect annually a president, vice president, and secretary-treasurer from its membership. The board may convene at the request of the president or at other times the board determines necessary to transact its business.

(2) The board shall adopt a seal by which the board may authenticate its documents.

History: En. Sec. 4, Ch. 532, L. 1991.

37-28-104. Board powers and duties. (1) The board shall:

(a) examine, license, grant temporary permits, and renew the licenses or permits of duly qualified applicants;

(b) establish examinations and passing scores for licensure under 37-28-202;

(c) adopt and implement rules for continuing education requirements to ensure the quality of respiratory care.

(2) The board may:

(a) adopt rules necessary to implement the provisions of this chapter; and

(b) establish relicensing requirements and procedures that the board considers appropriate.

History: En. Sec. 5, Ch. 532, L. 1991.

Part 2

Licensure

37-28-201. License required — exceptions — respiratory care not the practice of medicine. (1) Except as otherwise provided in this chapter, a person may not practice respiratory care or represent to the public that the person is a respiratory care practitioner unless licensed under the provisions of this chapter.

(2) This chapter does not prohibit:

(a) the practice of respiratory care that is an integral part of study by a student respiratory care practitioner;

(b) self-care by a patient or the gratuitous care by a friend or family member who does not purport to be a respiratory care practitioner; or

(c) respiratory care rendered in the course of an emergency.

(3) This chapter is not intended to limit, preclude, or interfere with the practice of other persons and health care providers licensed by the appropriate agencies of the state of Montana.

(4) This chapter may not be construed to permit the practice of medicine.

History: En. Sec. 6, Ch. 532, L. 1991; amd. Sec. 85, Ch. 429, L. 1995.

37-28-202. Licensing requirements — examination — fees. (1) To be eligible for licensure by the board as a respiratory care practitioner, the applicant shall:

(a) submit to the board an application fee in an amount established by the board and a written application on a form provided by the board demonstrating that the applicant has completed:

(i) high school or the equivalent; and

(ii) a respiratory care educational program accredited or provisionally accredited by the American medical association's committee on allied health education and accreditation in collaboration with the joint review committee for respiratory therapy education or their successor organizations; and

(b) pass an examination prescribed by the board. The board may use the entry-level examination written by the national board for respiratory care or another examination that satisfies the standards of the national commission for health certifying agencies or the commission's equivalent.

(2) A person holding a license to practice respiratory care in this state may use the title "respiratory care practitioner" and the abbreviation "RCP".

History: En. Sec. 7, Ch. 532, L. 1991; amd. Sec. 86, Ch. 429, L. 1995.

37-28-203. Renewal of license — application and fee. (1) A respiratory care practitioner's license expires on the date set by department rule.

(2) A licensee may renew a license by:

(a) filing an application with the board on a form approved by the board; and

(b) paying a renewal fee in an amount established by the board.

History: En. Sec. 8, Ch. 532, L. 1991; amd. Sec. 1, Ch. 392, L. 1993; amd. Sec. 87, Ch. 429, L. 1995.

37-28-204 and 37-28-205 reserved.

37-28-206. Repealed. Sec. 128, Ch. 429, L. 1995.

History: En. Sec. 9, Ch. 532, L. 1991; amd. Sec. 2, Ch. 392, L. 1993.

37-28-207 through 37-28-209 reserved.

37-28-210. Repealed. Sec. 128, Ch. 429, L. 1995.

History: En. Sec. 10, Ch. 532, L. 1991.

Part 3

Miscellaneous

37-28-301. Repealed. Sec. 128, Ch. 429, L. 1995.

History: En. Sec. 11, Ch. 532, L. 1991.

37-28-302. Penalty. A person convicted of violating any provision of this chapter, is guilty of a misdemeanor and shall be fined an amount not to exceed $500, or shall be imprisoned in a county jail for a term not to exceed 6 months, or both.

History: En. Sec. 12, Ch. 532, L. 1991.

37-28-303 and 37-28-304 reserved.

37-28-305. Deposit of fees. All fees and money received by the department must be deposited in the state special revenue fund for the board's use subject to 37-1-101(6).

History: En. Sec. 13, Ch. 532, L. 1991.

CHAPTER 29

DENTURITRY

Part 1 — General

37-29-101. Short title.
37-29-102. Definitions.
37-29-103. Association with dentists permitted.

37-29-104. Health insurance policies to include denturist services.
37-29-105. Applicability of other law.

Part 2 — Board of Dentistry

37-29-201. Board powers and duties.
37-29-202. Repealed.
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Part 3 — Licensing

37-29-301. License to practice required.
37-29-302. Exceptions.
37-29-303. Application for license.
37-29-304. Applications and fees.
37-29-305. Examinations.
37-29-306. Licensing.
37-29-307 through 37-29-310 reserved.
37-29-311. Repealed.
37-29-312. Repealed.
37-29-313. Repealed.
37-29-314 through 37-29-320 reserved.
37-29-321. Repealed.

Part 4 — Regulation

37-29-401. Standards of conduct and practice.
37-29-402. Prohibitions.
37-29-403. Procedure for making and fitting partial denture.
37-29-404. Guarantee.
37-29-405. Advertising restrictions.
37-29-406 through 37-29-410 reserved.
37-29-411. Injunction.
37-29-412. Violation and penalty.

Chapter Cross-References

Dentistry and dental hygiene, Title 37, ch. 4.

Part 1
General

37-29-101. Short title. This chapter may be cited as the "Freedom of Choice in Denture Services Act of 1984".

History: En. Sec. 1, I.M. No. 97, approved Nov. 6, 1984.

37-29-102. Definitions. As used in this chapter, unless the context requires otherwise, the following definitions apply:

(1) "Board" means the state board of dentistry provided for in 2-15-1842.

(2) "Denture" means any removable full or partial upper or lower prosthetic dental appliance to be worn in the mouth.

(3) "Denturist" means a person licensed under this chapter to engage in the practice of denturitry.

(4) "Department" means department of commerce provided for in Title 2, chapter 15, part 18.

(5) "Immediate denture" means a denture constructed prior to and inserted immediately after extraction of teeth.

(6) "Practice of denturitry" means:

(a) the making, fitting, constructing, altering, reproducing, or repairing of a denture and furnishing or supplying of a denture directly to a person or advising the use of a denture; or

(b) the taking or making or the giving of advice, assistance, or facilities respecting the taking or making of any impression, bite, cast, or design preparatory to or for the purpose of making, constructing, fitting, furnishing, supplying, altering, repairing, or reproducing a denture.

History: En. Sec. 2, I.M. No. 97, approved Nov. 6, 1984; amd. Sec. 3, Ch. 524, L. 1987.

37-29-103. Association with dentists permitted. A licensed denturist may enter into any lawful agreement with a dentist regarding fees, compensation, and business association.

History: En. Sec. 19, I.M. No. 97, approved Nov. 6, 1984.

37-29-104. Health insurance policies to include denturist services. Notwithstanding any provision of any policy of insurance covering health, whenever such policy provides for reimbursement for any service that is within the lawful scope of practice of a denturist, the insured under such policy is entitled to reimbursement for such service, whether the service is performed by a licensed dentist or a licensed denturist.

History: En. Sec. 18, I.M. No. 97, approved Nov. 6, 1984.

Cross-References

Insurance contract — policy provisions, Title 33, ch. 15, part 3.

Dentists performing services common to medicine and dentistry, 33-30-1011.

37-29-105. Applicability of other law. To the extent that they do not conflict with the provisions of this chapter, the provisions of chapter 1 of this title and Title 2, chapters 4 and 15, apply to the powers and duties of the department and the board.

History: En. Sec. 12, Ch. 548, L. 1985.

Cross-References

Montana Administrative Procedure Act, Title 2, ch. 4.

Allocation of boards for administrative purposes, 2-15-121.

Part 2
Board of Dentistry

Part Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

Allocation of boards for administrative purposes, 2-15-121.

Duties of Department, Director, and boards, Title 37, ch. 1, part 1.

37-29-201. Board powers and duties. The board has the following powers and duties:

(1) determination of the qualifications of applicants for licensure under this chapter;

(2) administration of examinations for licensure under this chapter;

(3) collection of fees and charges prescribed in this chapter;

(4) issuance, suspension, and revocation of licenses for the practice of denturitry under the conditions prescribed in this chapter; and

(5) to adopt, amend, and repeal rules necessary for the implementation, continuation, and enforcement of this chapter, including but not limited to form and display of licenses, license examination format, criteria and grading

of examinations, disciplinary standards for licensees, and inspection of denturitry premises and facilities.

History: En. Sec. 10, I.M. No. 97, approved Nov. 6, 1984; amd. Sec. 4, Ch. 548, L. 1985; amd. Sec. 88, Ch. 429, L. 1995.

37-29-202. Repealed. Sec. 5, Ch. 524, L. 1987.

History: En. Sec. 8, I.M. No. 97, approved Nov. 6, 1984; amd. Sec. 2, Ch. 548, L. 1985.

37-29-203. Repealed. Sec. 5, Ch. 524, L. 1987.

History: En. Sec. 9, I.M. No. 97, approved Nov. 6, 1984; amd. Sec. 3, Ch. 548, L. 1985.

Part 3
Licensing

Part Cross-References

Licensing to follow contested case procedure, 2-4-631.

Suspension of license fees for persons in military service, 10-1-605.

Duty of Department to administer and grade examinations, 37-1-101.

Duty of Board to adopt and enforce licensing and certification rules, 37-1-131.

Licensing boards to establish fees commensurate with costs, 37-1-134.

Licensing investigation and review — record access, 37-1-135.

Grounds for disciplinary action as grounds for license denial — conditions to new licenses, 37-1-137.

Licensure of criminal offenders, Title 37, ch. 1, part 2.

Nondiscrimination in licensing, 49-3-204.

37-29-301. License to practice required. A person shall hold a license for the practice of denturitry in order to perform the following acts:

(1) engaging or offering to engage in the practice of denturitry; or

(2) use in connection with the person's name the word or letters "denturist", "L.D.", or any other words, letters, abbreviations, or insignia implying that the person is engaged in the practice of denturitry.

History: En. Sec. 3, I.M. No. 97, approved Nov. 6, 1984; amd. Sec. 16, Ch. 230, L. 1999.

Compiler's Comments

1999 Amendment: Chapter 230 at beginning deleted "After April 1, 1985"; deleted former (2) that read: "(2) The practice of denturitry within the context of this chapter requires that all work except cast frame work be performed at the address shown on the denturist's license"; and made minor changes in style. Amendment effective October 1, 1999.

37-29-302. Exceptions. The provisions of this chapter do not apply to:

(1) a person interning under the direct supervision of a licensed denturist as required by 37-29-303(2), provided that a denturist may not supervise more than one intern at any one time;

(2) the practice of dentistry or medicine by persons authorized to do so by the state of Montana; or

(3) a student of denturitry in pursuit of clinical studies under a school program or internship as required by 37-29-303.

History: En. Sec. 4, I.M. No. 97, approved Nov. 6, 1984; amd. Sec. 158, Ch. 42, L. 1997.

37-29-303. Application for license. Upon application and payment of the appropriate fee, the board shall issue a license to practice denturitry to any applicant who meets the following criteria and scores a passing grade on the examination for licensure:

(1) documentation that the applicant has completed formal training of not less than 2 years at an educational institution accredited by a national or

regional accrediting agency recognized by the Montana state board of regents, the curriculum of which includes courses in head and oral anatomy and physiology, oral pathology, microbiology, partial denture construction and design, clinical dental technology, radiology, dental laboratory technology, asepsis, clinical jurisprudence, and medical emergencies, including cardiopulmonary resuscitation; and

(2) documentation that the applicant:

(a) has completed 1 year of internship under the direct supervision of a licensed denturist; or

(b) has 3 years of experience as a denturist under licensure in another state or Canada.

History: En. Sec. 11, I.M. No. 97, approved Nov. 6, 1984; amd. Sec. 5, Ch. 548, L. 1985; amd. Sec. 1, Ch. 245, L. 1991; amd. Sec. 89, Ch. 429, L. 1995.

37-29-304. Applications and fees. (1) The board is initially entitled to charge and collect the following fees:

(a) $200 application for licensing;

(b) $200 for original license;

(c) $200 license renewal fee;

(d) $200 for examination or reexamination, provided that if on reexamination only the written examination is required, the fee is $100; and

(e) $50 for a duplicate or replacement license or a license for a second address, provided that a denturist may not hold licenses bearing more than two different addresses.

(2) The board may set other fees and modify the initial fees in accordance with the provisions of 37-1-134.

History: En. Sec. 13, I.M. No. 97, approved Nov. 6, 1984; amd. Sec. 6, Ch. 548, L. 1985; amd. Sec. 33, Ch. 492, L. 1997.

37-29-305. Examinations. The board shall administer the examinations for licensure, subject to the following requirements:

(1) Examinations must be of a character that determines the qualifications, fitness, and ability of the applicant to practice denturitry.

(2) A written examination must include coverage of the following subjects:

(a) head and oral anatomy and physiology;

(b) oral pathology;

(c) partial denture construction and design;

(d) microbiology;

(e) radiology;

(f) clinical dental technology;

(g) dental laboratory technology;

(h) asepsis;

(i) clinical jurisprudence;

(j) medical emergencies.

(3) Applicants who fail to pass written and practical examinations may, upon payment of the appropriate fee, have a second opportunity to take the written or practical examinations, or both.

History: En. Sec. 12, I.M. No. 97, approved Nov. 6, 1984; amd. Sec. 159, Ch. 42, L. 1997; amd. Sec. 17, Ch. 230, L. 1999.

Compiler's Comments

1999 Amendment: Chapter 230 deleted former second sentence in (1) and (2) that read: "The form of the test must include written and oral examinations and a practical demonstration of skills.

(2) Examinations must be held at least annually on the second Monday in July. An applicant must obtain an average percentage score of 75% or better to qualify for licensure. The written and practical examinations must carry equal weight. The oral examination results may adjust an average score only two percentage points"; in (3) substituted "fail to pass" for "fail to score a 75% average on the"; and made minor changes in style. Amendment effective October 1, 1999.

37-29-306. Licensing. (1) A denturist license is valid for a period established by department rule and expires on the date set by department rule. A renewal license must be issued upon timely payment of the renewal fee and the submission of proof of continued qualification for licensure. In addition, the denturist shall submit proof that the denturist holds a current cardiopulmonary resuscitation card. The license must bear on its face the address where the licensee's denturist services will be performed.

(2) Applications must be submitted on forms approved by the board and furnished by the department. Each application must include all other documentation necessary to establish that the applicant meets the requirements for licensure and is eligible to take the licensure examination. Applications must be accompanied by the appropriate fees.

History: En. Sec. 14, I.M. No. 97, approved Nov. 6, 1984; amd. Sec. 7, Ch. 548, L. 1985; amd. Sec. 49, Ch. 83, L. 1989; amd. Sec. 2, Ch. 245, L. 1991; amd. Sec. 90, Ch. 429, L. 1995; amd. Sec. 34, Ch. 492, L. 1997.

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

37-29-307 through 37-29-310 reserved.

37-29-311. Repealed. Sec. 128, Ch. 429, L. 1995.

History: En. Sec. 15, I.M. No. 97, approved Nov. 6, 1984; amd. Sec. 8, Ch. 548, L. 1985.

37-29-312. Repealed. Sec. 128, Ch. 429, L. 1995.

History: En. Sec. 16, I.M. No. 97, approved Nov. 6, 1984.

37-29-313. Repealed. Sec. 128, Ch. 429, L. 1995.

History: En. Sec. 17, I.M. No. 97, approved Nov. 6, 1984.

37-29-314 through 37-29-320 reserved.

37-29-321. Repealed. Sec. 128, Ch. 429, L. 1995.

History: En. Sec. 22, I.M. No. 97, approved Nov. 6, 1984; amd. Sec. 9, Ch. 548, L. 1985.

Part 4
Regulation

37-29-401. Standards of conduct and practice. Each denturist shall comply with the following standards of practice:

(1) Each licensed denturist shall carry a current cardiopulmonary resuscitation card.

(2) Teeth and materials used must meet American dental association standards.

(3) Nonmetal full dentures must be permanently identified with the first and last name of the owner at the time of processing the dentures.

History: En. Sec. 6, I.M. No. 97, approved Nov. 6, 1984; amd. Sec. 18, Ch. 230, L. 1999.

Compiler's Comments

1999 Amendment: Chapter 230 deleted former (1) through (7) that read: "(1) There shall be at least three separate rooms:

(a) a reception room;

(b) an operatory room; and

(c) a laboratory.

(2) The operatory room must have a sink and cuspidor with running water and a disposal system.

(3) There must be a sterilization unit and cold disinfectant in every office to insure the protection of the public. Each denturist shall take care to use proper sterilization and sanitation techniques in all phases of his work.

(4) Floors, walls, ceilings, and benches must be kept in a sanitary condition.

(5) Every patient must have a separate and clean bib and a disposable cup.

(6) Every denturist shall wear a clean and professional garment.

(7) Every denturist shall wash his hands with germicidal or antiseptic soap and water in the presence of each patient"; deleted former (9) and (10) that read: "(9) Adequate and conveniently located toilet facilities must be provided within the building.

(10) A complete record of each patient must be kept"; and made minor changes in style. Amendment effective October 1, 1999.

37-29-402. Prohibitions. No licensed denturist may:

(1) extract or attempt to extract teeth;

(2) initially insert immediate dentures in the mouth of the intended wearer;

(3) diagnose or treat any abnormalities, except that a licensed denturist may apply tissue conditioning agents;

(4) recommend any prescription drug for any oral or medical disease; or

(5) construct or fit orthodontic appliances.

History: En. Sec. 5, I.M. No. 97, approved Nov. 6, 1984; amd. Sec. 3, Ch. 245, L. 1991.

37-29-403. Procedure for making and fitting partial denture. (1) Prior to making and fitting a partial denture, a denturist shall:

(a) formulate a study model of the intended denture;

(b) refer the patient to a dentist, together with the model for tooth cleaning, mouth preparation, and x-rays, as needed; and

(c) make the partial denture and fit it to the existing teeth after the dentist has completed the procedures listed in subsection (1)(b) and in accordance with the dentist's recommendations.

(2) A denturist may not cut, surgically remove, or surgically reduce any tissue or teeth in the process of fitting a partial denture.

History: En. Sec. 15, Ch. 548, L. 1985; amd. Sec. 91, Ch. 429, L. 1995.

37-29-404. Guarantee. Denturist services must be unconditionally guaranteed for a period of not less than 90 days.

History: En. Sec. 20, I.M. No. 97, approved Nov. 6, 1984; amd. Sec. 4, Ch. 524, L. 1987; amd. Sec. 19, Ch. 230, L. 1999.

Compiler's Comments

1999 Amendment: Chapter 230 deleted former (1) regarding posting of notice and form of notice (see 1999 Session Law for former text); and made minor changes in style. Amendment effective October 1, 1999.

37-29-405. Advertising restrictions. No person may represent or hold himself out to the public as a denturist or as practicing denturitry unless licensed under this chapter.

History: En. Sec. 14, Ch. 548, L. 1985.

37-29-406 through 37-29-410 reserved.

37-29-411. Injunction. When it appears to the board that any person, firm, or corporation is violating any of the provisions of this chapter, the board may in its own name bring an action in a court of competent jurisdiction for an injunction against such violation, and the court may enjoin the person, firm, or corporation from violation of this chapter without regard to whether proceedings have been or may be instituted before the board or whether criminal proceedings have been or may be instituted.

History: En. Sec. 11, Ch. 548, L. 1985.

37-29-412. Violation and penalty. Violation of any provision of this chapter constitutes a misdemeanor and upon conviction is punishable by a fine of not less than $100 or more than $1,000 or by imprisonment for not more than 6 months in the county jail, or by both such fine and imprisonment.

History: En. Sec. 21, I.M. No. 97, approved Nov. 6, 1984.

CHAPTER 30

BARBERS

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Part 1
General

37-30-101. Definitions — practice of barbering. (1) Unless the context requires otherwise, as used in this chapter the following definitions apply:

(a) "Barbershop" means a place where a person carries on, engages in, practices, or causes to be carried on, engaged in, or practiced the business of barbering.

(b) "Board" means the board of barbers provided for in 2-15-1856.

(c) "Department" means the department of commerce provided for in Title 2, chapter 15, part 18.

(2) Any one or any combination of the following practices, when done upon the human body for tonsorial purposes and not for the treatment of disease or physical or mental ailments and when done for payment, either directly or indirectly, constitutes the practice of barbering:

(a) shaving or trimming the beard;

(b) cutting, styling, coloring, or waving the hair;

(c) straightening of the hair by using chemicals;

(d) giving facial or scalp massage or treatment with oils, creams, lotions, or other preparations, either by hand or mechanical appliances;

(e) singeing or shampooing the hair or applying hair tonic or bleaching or highlighting the hair of male persons;

(f) applying cosmetic preparations, antiseptics, powders, oils, lotions, or gels to scalp, face, hands, or neck.

(3) The practice of cosmetology by a licensed cosmetologist, including cutting the hair of any person, does not constitute the practice of barbering.

History: (1)En. 66-401.1 by Sec. 34, Ch. 350, L. 1974; Sec. 66-401.1, R.C.M. 1947; (2)En. Sec. 3, Ch. 127, L. 1929; amd. Sec. 1, Ch. 18, L. 1931; re-en. Sec. 3228.21, R.C.M. 1935; amd. Sec. 3, Ch. 183, L. 1937; amd. Sec. 1, Ch. 150, L. 1939; amd. Sec. 1, Ch. 237, L. 1957; amd. Sec. 1, Ch. 48, L. 1969; amd. Sec. 35, Ch. 350, L. 1974; Sec. 66-403, R.C.M. 1947; (3)En. Sec. 2, Ch. 127, L. 1929; re-en. Sec. 3228.20, R.C.M. 1935; amd. Sec. 2, Ch. 183, L. 1937; Sec. 66-402, R.C.M. 1947; R.C.M. 1947, 66-401.1, 66-402, 66-403(2); amd. Sec. 3, Ch. 274, L. 1981; (4)En. Sec. 4, Ch. 544, L. 1981; amd. Sec. 1, Ch. 565, L. 1983; amd. Sec. 1, Ch. 274, L. 1985.

Cross-References

Cosmetology not practice of barbering, 37-31-102.

Part 2

Board of Barbers

Part Cross-References

Right to know, Art. II, sec. 9, Mont. Const.

Seal defined, 1-4-201.

Manner of making seal, 1-4-202.

Adoption and publication of rules, Title 2, ch. 4, part 3.

Public records, Title 2, ch. 6.

Allocation of boards for administrative purposes, 2-15-121.

Quasi-judicial boards, 2-15-124.

Board established, 2-15-1856.

Duties of Department, Director, and boards, Title 37, ch. 1, part 1.

37-30-201. Organization — seal — records — deposit of money. (1) The board shall elect a president, secretary, and treasurer. It shall adopt a seal for the authentication of its orders and records.

(2) The department shall keep a record of proceedings of the board. Money collected by the department shall be deposited in the state special revenue fund for the use of the board, subject to 37-1-101(6).

History: En. Sec. 7, Ch. 127, L. 1929; re-en. Sec. 3228.25, R.C.M. 1935; amd. Sec. 138, Ch. 147, L. 1963; amd. Sec. 23, Ch. 177, L. 1965; amd. Sec. 39, Ch. 350, L. 1974; R.C.M. 1947, 66-407; amd. Sec. 1, Ch. 277, L. 1983.

37-30-202. Compensation of members — expenses. Each member of the board shall receive compensation and travel expenses as provided for in 37-1-133.

History: En. Sec. 8, Ch. 127, L. 1929; re-en. Sec. 3228.26, R.C.M. 1935; amd. Sec. 2, Ch. 237, L. 1957; amd. Sec. 139, Ch. 147, L. 1963; amd. Sec. 2, Ch. 48, L. 1969; amd. Sec. 19, Ch. 93, L. 1969; amd. Sec. 1, Ch. 302, L. 1973; amd. Sec. 40, Ch. 350, L. 1974; amd. Sec. 25, Ch. 439, L. 1975; R.C.M. 1947, 66-408; amd. Sec. 24, Ch. 474, L. 1981.

37-30-203. Powers and duties of board and department — conducting examinations — rulemaking — hiring of inspectors. (1) The department shall, subject to 37-1-101, conduct practical examinations of applicants for certificates of registration to practice as registered barbers or barber instructors not less than four times a year at times and places the board determines. The examinations must cover the fundamentals of barbering, dermatology, and sanitation. The department shall issue certificates of registration.

(2) The board may adopt rules for the administration of this chapter and shall adopt rules pertaining to the following:

(a) the qualification, examination, and registration of license and instructor applicants;

(b) the qualification, curriculum, and operating standards for barber schools, including the supervision of barber students; and

(c) the inspection and conduct of persons and barbershops subject to the provisions of Title 37, chapter 30.

(3) A person hired by the department to make an inspection of a barbershop, school, or college shall receive a salary plus travel expenses as provided for in 2-18-501 through 2-18-503, as amended.

History: En. Sec. 9, Ch. 127, L. 1929; amd. Sec. 2, Ch. 18, L. 1931; re-en. Sec. 3228.27, R.C.M. 1935; amd. Sec. 4, Ch. 150, L. 1939; amd. Sec. 3, Ch. 48, L. 1969; amd. Sec. 41, Ch. 350, L. 1974; amd. Sec. 10, Ch. 453, L. 1977; R.C.M. 1947, 66-409; amd. Sec. 3, Ch. 83, L. 1981; amd. Sec. 5, Ch. 544, L. 1981; amd. Sec. 2, Ch. 565, L. 1983; amd. Sec. 2, Ch. 274, L. 1985; amd. Sec. 25, Ch. 481, L. 1997.

Part 3

Licensing — Certificates of Registration

Part Cross-References

Licensing to follow contested case procedure, 2-4-631.

Suspension of license fees for persons in military service, 10-1-605.

Duty of Department to administer and grade examinations, 37-1-101.

Reporting disciplinary actions against licensees, 37-1-105.

Duty of Board to adopt and enforce licensing and certification rules, 37-1-131.

Licensing boards to establish fees commensurate with costs, 37-1-134.

Grounds for disciplinary action as grounds for license denial — conditions to new licenses, 37-1-137.

Licensure of criminal offenders, Title 37, ch. 1, part 2.

Apprenticeship, Title 39, ch. 6, part 1.

Nondiscrimination in licensing, 49-3-204.

37-30-301. Certificate required. A person may not practice or attempt to practice barbering unless the person first receives from the department a certificate of registration.

History: En. Sec. 12, Ch. 127, L. 1929; re-en. Sec. 3228.30, R.C.M 1935; amd. Sec. 7, Ch. 150, L. 1939; amd. Sec. 44, Ch. 350, L. 1974; R.C.M. 1947, 66-412(1); amd. Sec. 3, Ch. 565, L. 1983; amd. Sec. 3, Ch. 274, L. 1985; amd. Sec. 92, Ch. 429, L. 1995.

37-30-302. Repealed. Sec. 18, Ch. 565, L. 1983.

History: En. Sec. 3, Ch. 127, L. 1929; amd. Sec. 1, Ch. 18, L. 1931; re-en. Sec. 3228.21, R.C.M. 1935; amd. Sec. 3, Ch. 183, L. 1937; amd. Sec. 1, Ch. 150, L. 1939; amd. Sec. 1, Ch. 237, L. 1957; amd. Sec. 1, Ch. 48, L. 1969; amd. Sec. 35, Ch. 350, L. 1974; R.C.M. 1947, 66-403(6).

37-30-303. Qualifications — application. (1) A person is qualified to receive a certificate of registration to practice barbering only if he:

(a) has completed 2,000 hours of instruction at a licensed barber school or college or other school recognized by the board and graduated from a licensed barber school or college or other school recognized by the board;

(b) has successfully passed the examination conducted by the department under 37-30-305, subject to 37-1-101, to determine his fitness to practice barbering;

(c) is at least 18 years old;

(d) is a graduate of the 8th grade; and

(e) is of good moral character.

(2) An applicant must file with the department an application setting forth the following information:

(a) full name and age of the applicant;

(b) name and place of the licensed barber school or college or other school which he attended;

(c) dates of attendance at the licensed barber school or college or other school;

(d) whether the applicant received a certificate of graduation from a licensed barber school or college or other school; and

(e) other information the board considers necessary.

History: En. Sec. 3, Ch. 127, L. 1929; amd. Sec. 1, Ch. 18, L. 1931; re-en. Sec. 3228.21, R.C.M. 1935; amd. Sec. 3, Ch. 183, L. 1937; amd. Sec. 1, Ch. 150, L. 1939; amd. Sec. 1, Ch. 237, L. 1957; amd. Sec. 1, Ch. 48, L. 1969; amd. Sec. 35, Ch. 350, L. 1974; R.C.M. 1947, 66-403(1), (3), (4); amd. Sec. 4, Ch. 565, L. 1983; amd. Sec. 4, Ch. 274, L. 1985.

37-30-304. Repealed. Sec. 8, Ch. 274, L. 1985.

History: En. Sec. 3, Ch. 127, L. 1929; amd. Sec. 1, Ch. 18, L. 1931; re-en. Sec. 3228.21, R.C.M. 1935; amd. Sec. 3, Ch. 183, L. 1937; amd. Sec. 1, Ch. 150, L. 1939; amd. Sec. 1, Ch. 237, L. 1957; amd. Sec. 1, Ch. 48, L. 1969; amd. Sec. 35, Ch. 350, L. 1974; R.C.M. 1947, 66-403(5).

37-30-305. Examination. Except as provided by rules adopted under 37-1-319 to implement 37-1-304, an applicant for a barber's certificate of registration shall apply to the department to take the examination for a barber's certificate of registration.

History: En. Sec. 3, Ch. 127, L. 1929; amd. Sec. 1, Ch. 18, L. 1931; re-en. Sec. 3228.21, R.C.M. 1935; amd. Sec. 3, Ch. 183, L. 1937; amd. Sec. 1, Ch. 150, L. 1939; amd. Sec. 1, Ch. 237, L. 1957; amd. Sec. 1, Ch. 48, L. 1969; amd. Sec. 35, Ch. 350, L. 1974; R.C.M. 1947, 66-403(7); amd. Sec. 6, Ch. 544, L. 1981; amd. Sec. 5, Ch. 274, L. 1985; amd. Sec. 93, Ch. 429, L. 1995.

37-30-306. Repealed. Sec. 128, Ch. 429, L. 1995.

History: En. Sec. 1, Ch. 127, L. 1929; re-en. Sec. 3228.19, R.C.M. 1935; amd. Sec. 1, Ch. 183, L. 1937; amd. Sec. 33, Ch. 350, L. 1974; R.C.M. 1947, 66-401(part); amd. Sec. 6, Ch. 565, L. 1983; amd. Sec. 6, Ch. 274, L. 1985.

37-30-307. Fees — persons with disabilities exempted — other fees prohibited. (1) The fee to be paid by an applicant with disabilities for an examination to determine the applicant's fitness to receive a certificate of registration to practice barbering and for the issuance of the certificate must be prescribed by the board.

(2) A person registered as a barber shall, before the expiration date established by rule of the department, annually pay a license fee, set by the board based on clerical and administrative costs, for the renewal of the person's certificate of registration.

(3) However, persons with physical disabilities trained for the barber profession by the department of public health and human services and certified by that department as having graduated from a barber college licensed by the board are not required to pay fees and are for a period of 1 year immediately following their training exempt from all except the sanitary provisions of this chapter.

(4) Another or an additional license or fee may not be imposed on barbers by a municipality or other subdivision of this state.

History: En. Sec. 11, Ch. 127, L. 1929; amd. Sec. 4, Ch. 18, L. 1931; re-en. Sec. 3228.29, R.C.M. 1935; amd. Sec. 4, Ch. 183, L. 1937; amd. Sec. 6, Ch. 150, L. 1939; amd. Sec. 3, Ch. 237, L. 1957; amd. Sec. 4, Ch. 48, L. 1969; amd. Sec. 1, Ch. 87, L. 1971; amd. Sec. 1, Ch. 301, L. 1973; amd. Sec. 1, Ch. 330, L. 1973; amd. Sec. 43, Ch. 350, L. 1974; amd. Sec. 2, Ch. 533, L. 1977; R.C.M. 1947, 66-411(1), (2); amd. Sec. 52, Ch. 345, L. 1981; amd. Sec. 6, Ch. 390, L. 1983; amd. Sec. 5, Ch. 565, L. 1983; amd. Sec. 7, Ch. 274, L. 1985; amd. Sec. 94, Ch. 546, L. 1995; amd. Sec. 27, Ch. 472, L. 1997; amd. Sec. 26, Ch. 481, L. 1997.

37-30-308. Display of certificate. A holder of a certificate of registration shall display it in a conspicuous place adjacent to or near his work chair.

History: En. Sec. 5, Ch. 127, L. 1929; re-en. Sec. 3228.23, R.C.M. 1935; amd. Sec. 3, Ch. 150, L. 1939; amd. Sec. 37, Ch. 350, L. 1974; R.C.M. 1947, 66-405(1).

37-30-309. Repealed. Sec. 128, Ch. 429, L. 1995.

History: En. Sec. 11, Ch. 544, L. 1981.

37-30-310. Instructor's certificate required — application and qualification — fees. (1) Except as provided in subsection (3), a person may not, for a fee, instruct another in the practice of barbering unless that person holds an instructor's certificate issued by the board.

(2) The board shall issue an instructor's certificate to:

(a) any person engaged as an instructor in a barber college on October 1, 1983, upon payment of the certification fee; or

(b) any person who passes the instructor's examination given by the department and pays a certification fee established by the board.

(3) This section does not apply to persons paying the license fee required by 37-30-424.

History: En. Sec. 13, Ch. 565, L. 1983; amd. Sec. 35, Ch. 492, L. 1997.

37-30-311. Instructor's certification examination. (1) An instructor's examination may be administered only to those persons who are high school graduates or possess the equivalent of a high school diploma and who:

(a) have been actively and continuously engaged in the practice of barbering in this state or in any other state requiring a barber's certificate or license, under laws substantially equivalent to this chapter, for at least 3 years immediately prior to application to take the instructor's certification examination; or

(b) have a barber's license or certificate of registration and have completed a course in barber instructor training of at least 500 hours of instruction at a barber school or college licensed by the board under this chapter.

(2) Instructor's examinations must be held at the time and place specified by the board, but must be held at least once a year.

(3) Anyone failing twice to pass an examination may not apply to retake the examination:

(a) sooner than 6 months after the date of the second failure; or

(b) until he has taken 200 hours of additional instructor training at a barber school or college licensed by the board.

History: En. Sec. 14, Ch. 565, L. 1983; amd. Sec. 1, Ch. 4, L. 1987.

Part 4

Licensing and Regulation of Barbershops and Schools

Part Cross-References

Licensing to follow contested case procedure, 2-4-631.

Duty of Board to adopt and enforce licensing and certification rules, 37-1-131.

Licensing boards to establish fees commensurate with costs, 37-1-134.

Licensing investigation and review — record access, 37-1-135.

Licensure of criminal offenders, Title 37, ch. 1, part 2.

Nondiscrimination in licensing, 49-3-204.

37-30-401. License required. A barbershop, school, or college must be conducted at a fixed place of establishment. A person or corporation may not open or maintain a barbershop, school, or college or hold himself or itself out as engaging in or conducting a barbershop, school, or college unless first licensed by the board.

History: En. Sec. 3, Ch. 127, L. 1929; amd. Sec. 1, Ch. 18, L. 1931; re-en. Sec. 3228.21, R.C.M. 1935; amd. Sec. 3, Ch. 183, L. 1937; amd. Sec. 1, Ch. 150, L. 1939; amd. Sec. 1, Ch. 237, L. 1957; amd. Sec. 1, Ch. 48, L. 1969; amd. Sec. 35, Ch. 350, L. 1974; R.C.M. 1947, 66-403(part (8)).

37-30-402. Application procedure for barbershops — investigation and inspection — hearing — grant or refusal of license. An application for a barbershop license shall be in writing and verified on a form prescribed by the board. On receipt by the department of an application for a license and on payment to the department of the initial inspection fee, the board shall have an investigation and inspection made as to the character of the applicant and, on notice and after hearing, shall report its findings to the department, which shall grant a license if the board finds that the applicant is of good character and that the proposed barbershop is equipped and will be conducted as required under this chapter. The application must be granted or refused within 30 days from the date of filing of the application or within 15 days after the hearing on the application if a hearing is held.

History: En. Sec. 3, Ch. 127, L. 1929; amd. Sec. 1, Ch. 18, L. 1931; re-en. Sec. 3228.21, R.C.M. 1935; amd. Sec. 3, Ch. 183, L. 1937; amd. Sec. 1, Ch. 150, L. 1939; amd. Sec. 1, Ch. 237, L. 1957; amd. Sec. 1, Ch. 48, L. 1969; amd. Sec. 35, Ch. 350, L. 1974; R.C.M. 1947, 66-403(9); amd. Sec. 7, Ch. 565, L. 1983.

Cross-References

Oath defined, 1-1-201.

Proof of execution, Title 1, ch. 5, part 3.

Power of notary to take acknowledgments, 1-5-416.

Oaths, Title 1, ch. 6.

Affidavits, Title 26, ch. 1, part 10.

Licensing investigation and review — record access, 37-1-135.

Perjury, 45-7-201.

False swearing, 45-7-202.

37-30-403. Facilities required for licensure — inspection. (1) Before a license is issued to conduct a barbershop, barber school, or barber college in this state, the barbershop, barber school, or barber college must be inspected by the department and approved by the board and must meet the following requirements:

(a) It must have both hot and cold running water connected with the city water supply. In villages or towns where running water is not available, hot water tanks must have not less than a 2-gallon capacity with gravity pressure. Wastewater must be disposed of through a system carrying it away from the building by sewer connections or in a manner that meets the requirements of the department of environmental quality rules and city ordinances and that has the approval of the city or village board of health, as required by law.

(b) The headrest of a barber chair must be equipped so that each customer will be supplied with a clean, fresh paper or towel.

(c) It must have a closed cabinet for each chair, to keep instruments in when not in use and must have proper sterilization equipment for immersing instruments before use on each customer.

(d) It must have a sufficient number of towels so that each customer will be served with a clean, laundered towel.

(e) It must be well-lighted, well-ventilated, and kept in a clean, orderly, and sanitary condition at all times.

(f) It must pay to the department the required fee.

(2) Barbershops, barber schools, or barber colleges must be open to members of the department for inspection during business hours.

(3) The board shall inspect annually each barbershop, barber school, or barber college to determine compliance with statutory requirements and board rules. The board may suspend or revoke the license of any barbershop, barber school, or barber college that violates statutory requirements or board rules.

(4) The board may grant a temporary license to a barbershop, barber school, or barber college until the initial inspection is completed.

(5) Barber schools and barber colleges shall also comply with the provisions of 37-30-406 and 37-30-407.

History: En. Sec. 3, Ch. 127, L. 1929; amd. Sec. 1, Ch. 18, L. 1931; re-en. Sec. 3228.21, R.C.M. 1935; amd. Sec. 3, Ch. 183, L. 1937; amd. Sec. 1, Ch. 150, L. 1939; amd. Sec. 1, Ch. 237, L. 1957; amd. Sec. 1, Ch. 48, L. 1969; amd. Sec. 35, Ch. 350, L. 1974; R.C.M. 1947, 66-403(part); amd. Sec. 7, Ch. 544, L. 1981; amd. Sec. 8, Ch. 565, L. 1983; amd. Sec. 65, Ch. 418, L. 1995.

37-30-404. Barber schools — operator — license fee. (1) A barber school or college operating in this state must have in charge a person who has had 3 years' continuous experience as a barber and who is licensed as a barber instructor under 37-30-310.

(2) The owner of the school or college shall first secure a license to operate granted by the board and issued by the department, on payment of an annual license fee prescribed by the board, and shall keep the license prominently displayed.

(3) The owner shall, before commencing business, file with the secretary of state a bond to this state, which shall be approved by the attorney general, in the sum of $5,000, conditioned on the faithful compliance of the barber school or college with this chapter and the payment of judgments that may be obtained against the school, college, or owner on account of fraud, misrepresentation, or deceit practiced by them or by their agents.

(4) All barber schools or colleges shall keep prominently displayed a substantial sign as a barber school or barber college.

(5) On receiving students, all barber schools or colleges shall immediately apply to the department for student permits on blank forms prescribed by the board.

History: En. Sec. 3, Ch. 127, L. 1929; amd. Sec. 1, Ch. 18, L. 1931; re-en. Sec. 3228.21, R.C.M. 1935; amd. Sec. 3, Ch. 183, L. 1937; amd. Sec. 1, Ch. 150, L. 1939; amd. Sec. 1, Ch. 237, L. 1957; amd. Sec. 1, Ch. 48, L. 1969; amd. Sec. 35, Ch. 350, L. 1974; R.C.M. 1947, 66-403(part (8)); amd. Sec. 53, Ch. 345, L. 1981; amd. Sec. 8, Ch. 544, L. 1981; amd. Sec. 9, Ch. 565, L. 1983.

37-30-405. Barber school license — application procedure. (1) A person desiring to conduct a barber school or college must make application for the license required by 37-30-401 on forms provided by the department. The application must:

(a) include the name and address of the owners of the school and of the school itself;

(b) show that the person in charge has the experience required by 37-30-404;

(c) show that the applicant is of good moral character and possesses any education, training, and experience required by this chapter and any reasonable rules of the board;

(d) include a detailed floor plan of the school showing that it will have adequate space to conduct the activities of the school and that it will have at least two public restrooms, a storage room, a classroom, and a manager's office;

(e) include the names and addresses of the instructors;

(f) include a copy of any school rules;

(g) show that the school and its owner or manager can and will comply with the requirements of this chapter and the rules of the board; and

(h) be accompanied by the application and initial inspection fee established by the board.

(2) Upon receipt of a completed application, the department must conduct an inspection of the school to determine its compliance with 37-30-403, 37-30-406, 37-30-407, and this section. The board must issue the license if the school, its owner, and manager have:

(a) filed the bond required under 37-30-404; and

(b) complied with the requirements of this chapter and the rules of the board.

History: **En. Sec. 10, Ch. 565, L. 1983.**

37-30-406. Barber schools — curriculum and students. (1) A barber school or college licensed under this chapter shall require the completion by every student in not less than 11 months and not more than 15 months of 2,000 hours of instruction for graduation. Hours of training must be allocated in the following amounts to the courses or subjects specified:

(a) haircutting, 300 hours;
(b) shampooing, 150 hours;
(c) facials, 50 hours;
(d) styling, 300 hours;
(e) permanent waving, 300 hours;
(f) hair replacements, 50 hours;
(g) scalp treatments, 50 hours;
(h) chemical straightening, 50 hours;
(i) hair coloring, 200 hours;
(j) shaving, 25 hours;
(k) sales and products knowledge, 125 hours;
(l) shop management and bookkeeping, 50 hours;
(m) state barber laws, rules, and regulations, 25 hours;
(n) business ethics and personal grooming, 25 hours; and
(o) balance to be used at the discretion of the school, 300 hours.

(2) Within the limits prescribed by subsection (1), the course of study at a school or college must be designed to prepare a student to successfully complete the examinations required by 37-30-303 and 37-30-305.

(3) A barber school or college licensed under this chapter:

(a) shall use a grading system for each student, keep a record of the attendance of each student, and require satisfactory completion of regular examinations, of which records must be kept;

(b) shall maintain the records required by subsection (3)(a) for inspection by the board;

(c) shall certify to the board a copy of a student's transcript within 3 days of his completion of 2,000 hours of study and graduation;

(d) shall furnish to a student at the time of his initial registration a statement showing the cost of tuition, books, equipment, supplies, and any other charges to be made prior to graduation;

(e) shall employ one instructor for every 15 students;

(f) may not begin instruction at a new school with less than 7 students;

(g) may not require a student to take more than 8 hours of classroom instruction a day;

(h) may not allow a student to engage in the practice of barbering upon the public until he has completed 100 hours of instruction at the school; and

(i) may not enroll any student transferring from another school until a certified transcript of the student's course work has been received and approved by the board.

History: En. Sec. 11, Ch. 565, L. 1983.

37-30-407. Barber schools — operating requirements. (1) A barber school or college licensed or to be licensed under this chapter:

(a) may not allow any person to sleep in or use for residential or any other purpose tending to make unsanitary any part of the school or college used for instructional purposes;

(b) may not allow a barbershop to be operated in conjunction with the school or college;

(c) may not allow a student, other than a student teacher, to teach other students;

(d) may not advertise the price of any barbering service offered to members of the public;

(e) shall use any schedule of prices adopted by rule of the board;

(f) may not engage in false or deceptive advertising;

(g) may not advertise in any manner until a license has been received;

(h) shall notify the board of any change in the management of the school or college and of the discharge of any barber certified under this chapter; and

(i) may employ only instructors licensed under this chapter.

(2) It is the intent of the legislature, for the purposes of subsections (1)(d) and (1)(e), to avail itself of the immunity from the Sherman Antitrust Act (15 U.S.C. 1, et seq.) provided under the decision of the United States supreme court in Parker v. Brown, 317 US 341 (1943).

History: En. Sec. 12, Ch. 565, L. 1983.

37-30-408 through 37-30-410 reserved.

37-30-411. Only licensed barber eligible for barbershop license. A barbershop license may not be issued to anyone except one who holds a valid barber's certificate under this chapter, and a barbershop may not be maintained or conducted except by one who holds a barbershop license issued by the department under this chapter. This certificate or license is not transferable as to person or place.

History: En. Sec. 3, Ch. 127, L. 1929; amd. Sec. 1, Ch. 18, L. 1931; re-en. Sec. 3228.21, R.C.M. 1935; amd. Sec. 3, Ch. 183, L. 1937; amd. Sec. 1, Ch. 150, L. 1939; amd. Sec. 1, Ch. 237, L. 1957; amd. Sec. 1, Ch. 48, L. 1969; amd. Sec. 35, Ch. 350, L. 1974; R.C.M. 1947, 66-403(10).

37-30-412. Barbershop owner's duty to monitor employees. An owner or manager of a barbershop licensed under this chapter shall make certain that each barber employed holds a certificate to practice barbering in this state and that employees observe the sanitary rules of the department of public health and human services and the department of commerce and shall report to the department of commerce the name of a person practicing barbering in the barbershop who has a communicable disease.

History: En. Sec. 3, Ch. 127, L. 1929; amd. Sec. 1, Ch. 18, L. 1931; re-en. Sec. 3228.21, R.C.M. 1935; amd. Sec. 3, Ch. 183, L. 1937; amd. Sec. 1, Ch. 150, L. 1939; amd. Sec. 1, Ch. 237, L. 1957; amd. Sec. 1, Ch. 48, L. 1969; amd. Sec. 35, Ch. 350, L. 1974; R.C.M. 1947, 66-403(part); amd. Sec. 3, Ch. 274, L. 1981; amd. Sec. 66, Ch. 418, L. 1995; amd. Sec. 95, Ch. 546, L. 1995.

37-30-413. Display of price schedule. A barbershop shall display a schedule of prices in a conspicuous place.

History: En. Sec. 5, Ch. 127, L. 1929; re-en. Sec. 3228.23, R.C.M. 1935; amd. Sec. 3, Ch. 150, L. 1939; amd. Sec. 37, Ch. 350, L. 1974; R.C.M. 1947, 66-405(3).

37-30-414 through 37-30-420 reserved.

37-30-421. Display of license. A license to operate a barbershop, school, or college shall specify the name of the licensee and shall be kept in a conspicuous place in the barbershop, school, or college. A barbershop, school, or college may not be conducted or held out as being conducted under any name except the name appearing as licensee on the license issued by the department.

History: En. Sec. 5, Ch. 127, L. 1929; re-en. Sec. 3228.23, R.C.M. 1935; amd. Sec. 3, Ch. 150, L. 1939; amd. Sec. 37, Ch. 350, L. 1974; R.C.M. 1947, 66-405(2).

37-30-422. Maintenance of sanitary conditions. Barbershops, barber schools, and barber colleges must be operated and maintained in a sanitary condition in order to preserve the public health and prevent the spread of disease. The board of barbers, in consultation with the department of public health and human services, may adopt rules to preserve the public health and prevent the spread of disease.

History: En. Sec. 1, Ch. 127, L. 1929; re-en. Sec. 3228.19, R.C.M. 1935; amd. Sec. 1, Ch. 183, L. 1937; amd. Sec. 33, Ch. 350, L. 1974; R.C.M. 1947, 66-401(part); amd. Sec. 9, Ch. 544, L. 1981; amd. Sec. 67, Ch. 418, L. 1995; amd. Sec. 96, Ch. 546, L. 1995.

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

37-30-423. Initial inspection fee — renewal. (1) In addition to the fees and charges provided by law on March 11, 1939, barbershops established prior to that date and that had been under the inspection of the board shall pay a license fee set by the board based on clerical and administrative costs. Barbershops established after March 11, 1939, shall pay an initial inspection fee prescribed by the board for the first licensure period or portion of the licensure period and shall pay a license fee set by the board.

(2) Barbershop, school, or college licenses, once issued, expire on the date established by rule of the department, and an owner or manager of a barbershop, school, or college that continues in active operation shall, before the expiration date, renew the barbershop, school, or college license and pay the required fee. A barbershop that fails to have the license renewed before the expiration date shall, on renewal, pay a penalty prescribed by the board, and a barber school or college that fails to have the license renewed before the expiration date shall, on renewal, pay a penalty prescribed by the board.

History: En. Sec. 11, Ch. 127, L. 1929; amd. Sec. 4, Ch. 18, L. 1931; re-en. Sec. 3228.29, R.C.M. 1935; amd. Sec. 4, Ch. 183, L. 1937; amd. Sec. 6, Ch. 150, L. 1939; amd. Sec. 3, Ch. 237, L. 1957; amd. Sec. 4, Ch. 48, L. 1969; amd. Sec. 1, Ch. 301, L. 1973; amd. Sec. 1, Ch. 330, L. 1973; amd. Sec. 43, Ch. 350, L. 1974; amd. Sec. 2, Ch. 533, L. 1977; R.C.M. 1947, 66-411(part); amd. Sec. 54, Ch. 345, L. 1981; amd. Sec. 7, Ch. 390, L. 1983; amd. Sec. 37, Ch. 492, L. 1997.

37-30-424. Fee for advanced barber training program, clinic, or seminar. A person who is not a resident of this state who conducts in this state any advanced barber training program, clinic, or seminar for barbers as defined in this chapter shall pay a license fee prescribed by the board to the department or a 10-day license fee prescribed by the board and display the license while operating. An advanced barber training program, clinic, or seminar may be inspected by the department at reasonable times during operation.

History: En. Sec. 11, Ch. 127, L. 1929; amd. Sec. 4, Ch. 18, L. 1931; re-en. Sec. 3228.29, R.C.M. 1935; amd. Sec. 4, Ch. 183, L. 1937; amd. Sec. 6, Ch. 150, L. 1939; amd. Sec. 3, Ch. 237, L. 1957; amd. Sec. 4, Ch. 48, L. 1969; amd. Sec. 1, Ch. 301, L. 1973; amd. Sec. 1, Ch. 330, L. 1973; amd. Sec. 43, Ch. 350, L. 1974; amd. Sec. 2, Ch. 533, L. 1977; R.C.M. 1947, 66-411(part); amd. Sec. 55, Ch. 345, L. 1981; amd. Sec. 15, Ch. 565, L. 1983; amd. Sec. 36, Ch. 492, L. 1997.

37-30-425. Renumbered 37-30-502. Sec. 3, Ch. 465, L. 1989.

Part 5
Remedies for Violation

37-30-501. Penalty. A person practicing the occupation of a barber or barber instructor without first having obtained a license under this chapter or a person knowingly employing a barber or barber instructor who has not obtained a license or a person who falsely pretends to be qualified to practice the occupation of a barber or barber instructor or a person who otherwise violates this chapter is guilty of a misdemeanor and on conviction shall be fined not less than $25 or more than $200 or imprisoned in the county jail for not less than 10 days or more than 90 days, or both. In addition, the board may after hearing suspend or revoke a barber's or barber instructor's certificate of registration or license to operate a barbershop, school, or college, or both, by reason of the person willfully violating this chapter or persistently failing to conform to the rules adopted by the board.

History: En. Sec. 10, Ch. 127, L. 1929; amd. Sec. 2, Ch. 18, L. 1931; re-en. Sec. 3228.28, R.C.M. 1935; amd. Sec. 5, Ch. 150, L. 1939; amd. Sec. 42, Ch. 350, L. 1974; R.C.M. 1947, 66-410; amd. Sec. 17, Ch. 565, L. 1983.

Cross-References

Prosecutorial duties of County Attorney, 7-4-2712.

Duties of County Attorney relating to state matters, 7-4-2716.

37-30-502. Repealed. Sec. 128, Ch. 429, L. 1995.

History: En. 66-403.1 by Sec. 36, Ch. 350, L. 1974; R.C.M. 1947, 66-403.1; amd. Sec. 10, Ch. 544, L. 1981; amd. Sec. 16, Ch. 565, L. 1983; amd. Sec. 91, Ch. 370, L. 1987; amd. Sec. 1, Ch. 465, L. 1989; Sec. 37-30-425, MCA 1987; redes. 37-30-502 by Sec. 3, Ch. 465, L. 1989.

CHAPTER 31

COSMETOLOGY

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Chapter Cross-References

Electrology, Title 37, ch. 32.

Part 1
General

37-31-101. Definitions. Unless the context requires otherwise, in this chapter, the following definitions apply:

(1) "Board" means the board of cosmetologists provided for in 2-15-1857.

(2) "Booth" means any part of a cosmetology, manicuring, or esthetics salon that is rented or leased for the performance of cosmetologist, manicuring, or esthetics services, as specified in 39-51-204(1)(e).

(3) "Cosmetology salon" means the premises, a building, or a part of a building in which a branch or combination of branches of cosmetology or the occupation of a hairdresser and cosmetician or cosmetologist is practiced by a person licensed under the provisions of this chapter.

(4) "Department" means the department of commerce provided for in Title 2, chapter 15, part 18.

(5) "Esthetician" means a person licensed under this chapter to engage in the practice of esthetics.

(6) "Esthetics" means skin care of the face, neck, and hands, including but not limited to hot compresses or the use of approved electrical appliances or chemical compounds formulated for professional application only and the

temporary removal of superfluous hair by means of lotions, creams, or mechanical or electrical apparatus or appliances on another person.

(7) "Esthetics salon" means the premises, a building, or a part of a building in which the art of esthetics is practiced.

(8) "Manicuring" includes nail care of the hands and feet and the application and maintenance of artificial nails.

(9) "Manicuring salon" means the premises, a building, or a part of a building in which the art of manicuring is practiced.

(10) "Practice and teaching of cosmetology" means work included in the terms "hairdressing", "manicuring", "esthetics", and "beauty culture" and performed in cosmetology salons, in booths, or by itinerant cosmetologists, which work is done for the embellishment, cleanliness, and beautification of the hair, scalp, face, arms, feet, or hands. The practice and teaching of cosmetology may not be construed to include itinerant cosmetologists who perform their services without compensation for demonstration purposes in any regularly established store or place of business holding a license from the state of Montana as a store or place of business.

History: En. Sec. 2, Ch. 104, L. 1929; re-en. Sec. 3228.2, R.C.M. 1935; amd. Sec. 2, Ch. 222, L. 1939; amd. Sec. 2, Ch. 20, L. 1955; amd. Sec. 2, Ch. 244, L. 1961; amd. Sec. 1, Ch. 175, L. 1974; amd. Sec. 64, Ch. 350, L. 1974; R.C.M. 1947, 66-802; amd. Sec. 3, Ch. 274, L. 1981; amd. Sec. 1, Ch. 260, L. 1985; amd. Sec. 1, Ch. 602, L. 1985; amd. Sec. 2, Ch. 88, L. 1989; amd. Sec. 1, Ch. 473, L. 1993; amd. Sec. 1, Ch. 305, L. 1997; amd. Sec. 17, Ch. 491, L. 1997.

Cross-References

Practice of barbering defined, 37-30-101.

37-31-102. Exemptions. Nothing in this chapter prohibits:

(1) service in case of emergency or domestic administration without compensation;

(2) services by persons authorized under the laws of this state to practice dentistry, the healing arts, or mortuary science; or

(3) services by barbers lawfully engaged in the performance of the usual and ordinary duties of their vocation or in cutting women's hair.

History: En. Sec. 18, Ch. 104, L. 1929; re-en. Sec. 3228.18, R.C.M. 1935; amd. Sec. 2, Ch. 101, L. 1977; R.C.M. 1947, 66-818.

Part 2

Board of Cosmetologists

Part Cross-References

Seal defined, 1-4-201.

Adoption and publication of rules, Title 2, ch. 4, part 3.

Allocation of boards for administrative purposes, 2-15-121.

Quasi-judicial boards, 2-15-124.

Board established, 2-15-1857.

Duties of Department, Director, and boards, Title 37, ch. 1, part 1.

37-31-201. Organization — seal. (1) The board shall annually, before March 1, elect from its number a president, vice-president, and secretary-treasurer.

(2) The board shall adopt a seal and authenticate its acts.

History: (1)En. Sec. 5, Ch. 104, L. 1929; re-en. Sec. 3228.5, R.C.M. 1935; amd. Sec. 5, Ch. 222, L. 1939; amd. Sec. 66, Ch. 350, L. 1974; Sec. 66-805, R.C.M. 1947; (2)En. Sec. 6, Ch. 104, L. 1929; re-en. Sec. 3228.6, R.C.M. 1935; amd. Sec. 2, Ch. 80, L. 1941; amd. Sec.

5, Ch. 244, L. 1961; amd. Sec. 67, Ch. 350, L. 1974; amd. Sec. 1, Ch. 305, L. 1977; Sec. 66-806, R.C.M. 1947; R.C.M. 1947, 66-805, 66-806(2).

37-31-202. Compensation of members — expenses. Each member of the board is entitled to receive compensation and travel expenses as provided for in 37-1-133.

History: En. Sec. 9, Ch. 104, L. 1929; re-en. Sec. 3228.9, R.C.M. 1935; amd. Sec. 8, Ch. 222, L. 1939; amd. Sec. 135, Ch. 147, L. 1963; amd. Sec. 1, Ch. 133, L. 1967; amd. Sec. 1, Ch. 224, L. 1974; amd. Sec. 70, Ch. 350, L. 1974; amd. Sec. 28, Ch. 439, L. 1975; amd. Sec. 1, Ch. 531, L. 1977; R.C.M. 1947, 66-809(part); amd. Sec. 25, Ch. 474, L. 1981.

37-31-203. Rulemaking powers. The board shall prescribe rules for:

(1) the conduct of its business;

(2) the qualification, examination, and registration of applicants to practice cosmetology, manicuring, or esthetics or to teach cosmetology, manicuring, or esthetics;

(3) the qualification and registration of applicants for manager-operator licenses;

(4) the regulation and instruction of apprentices and students;

(5) the conduct of schools of cosmetology, manicuring, and esthetics for apprentices and students;

(6) the qualification and registration of applicants for booth rental licenses; and

(7) generally the conduct of the persons, firms, or corporations affected by this chapter.

History: En. Sec. 6, Ch. 104, L. 1929; re-en. Sec. 3228.6, R.C.M. 1935; amd. Sec. 2, Ch. 80, L. 1941; amd. Sec. 5, Ch. 244, L. 1961; amd. Sec. 67, Ch. 350, L. 1974; amd. Sec. 1, Ch. 305, L. 1977; R.C.M. 1947, 66-806(1); amd. Sec. 15, Ch. 22, L. 1979; amd. Sec. 2, Ch. 602, L. 1985; amd. Sec. 3, Ch. 88, L. 1989; amd. Sec. 2, Ch. 305, L. 1997.

37-31-204. Sanitary rules. The board, subject to the approval of the department of public health and human services, shall prescribe sanitary rules that it considers necessary, with particular reference to the precautions necessary to be employed to prevent the creation and spread of infectious and contagious diseases.

History: En. Sec. 12, Ch. 104, L. 1929; re-en. Sec. 3228.12, R.C.M. 1935; amd. Sec. 72, Ch. 350, L. 1974; R.C.M. 1947, 66-812; amd. Sec. 68, Ch. 418, L. 1995; amd. Sec. 97, Ch. 546, L. 1995.

Part 3
Licensing

Part Cross-References

Contested case as including licensing, 2-4-102.

Adoption and publication of rules, Title 2, ch. 4, part 3.

Contested case procedure, Title 2, ch. 4, part 6.

Licensing to follow contested case procedure, 2-4-631.

Suspension of license fees for persons in military service, 10-1-605.

Unfair trade practices and consumer protection, Title 30, ch. 14.

Duty of Department to administer and grade examinations and to investigate unprofessional conduct, 37-1-101.

Reporting disciplinary actions against licensees, 37-1-105.

Duties of Director in investigation of unethical conduct, 37-1-121.

Duty of Board to adopt and enforce licensing and certification rules and to adopt rules on conduct, 37-1-131.

Licensing boards to establish fees commensurate with costs, 37-1-134.

Licensing investigation and review — record access, 37-1-135.

Disciplinary authority of boards — injunctions, 37-1-136.

Grounds for disciplinary action as grounds for license denial — conditions to new licenses, 37-1-137.

Licensure of criminal offenders, Title 37, ch. 1, part 2.

Nondiscrimination in licensing, 49-3-204.

37-31-301. Prohibited acts. (1) Without an appropriate license issued under this chapter, it is unlawful to:

(a) practice cosmetology for compensation;

(b) own, manage, operate, or conduct a school of cosmetology, manicuring, or esthetics;

(c) manage or operate a cosmetology salon, manicuring salon, esthetics salon, or booth;

(d) teach in a school of cosmetology, manicuring, or esthetics;

(e) practice manicuring for compensation;

(f) practice as a finger waver; or

(g) practice esthetics for compensation.

(2) It is unlawful:

(a) for a person who owns, manages, or controls a cosmetology salon to employ or use an unlicensed person as a cosmetologist, a manicurist, or an esthetician;

(b) to operate a cosmetology school without complying with all of the regulations of 37-31-311;

(c) to practice cosmetology in any place other than in a licensed salon as provided in this chapter, except when a licensed operator is requested:

(i) by a customer to go to a place other than a licensed salon and is sent to the customer from a licensed salon; or

(ii) by a customer with a disability or homebound customer to go to the customer's place of residence;

(d) for a person who owns, manages, or controls a manicuring salon to employ or use an unlicensed person as a manicurist;

(e) for a person who owns, manages, or controls an esthetics salon to employ or use an unlicensed person as an esthetician;

(f) to operate a manicuring school or a school of esthetics without complying with 37-31-311;

(g) to violate any of the provisions of this chapter.

History: En. Sec. 17, Ch. 104, L. 1929; amd. Sec. 1, Ch. 13, L. 1931; re-en. Sec. 3228.17, R.C.M. 1935; amd. Sec. 14, Ch. 222, L. 1939; amd. Sec. 1, Ch. 140, L. 1959; R.C.M. 1947, 66-817(A), (B); amd. Sec. 3, Ch. 602, L. 1985; amd. Sec. 4, Ch. 88, L. 1989; amd. Sec. 1, Ch. 23, L. 1993; amd. Sec. 2, Ch. 473, L. 1993; amd. Sec. 3, Ch. 305, L. 1997; amd. Sec. 28, Ch. 472, L. 1997.

37-31-302. License required to practice, teach, or operate salon, booth, or school. (1) A person may not practice or teach cosmetology, manicuring, or esthetics without a license.

(2) A place may not be used or maintained for the teaching of cosmetology, manicuring, or esthetics for compensation except under a certificate of registration.

(3) A person may not operate or manage a cosmetology salon, a manicuring salon, or an esthetics salon or practice cosmetology, manicuring, or esthetics without a license.

(4) A person may not operate or conduct a school of cosmetology, manicuring, or esthetics or teach the art of cosmetology, manicuring, or esthetics without a license to teach cosmetology, manicuring, or esthetics.

(5) A person may not manage or operate a booth without a booth rental license.

(6) A person, firm, partnership, or corporation desiring to operate a cosmetology salon shall make an application to the department for a certificate of registration and license. The application must be accompanied by the registration fee.

(7) A license may not be issued until the inspection fees required in 37-31-312 have been paid.

History: En. Sec. 1, Ch. 104, L. 1929; re-en. Sec. 3228.1, R.C.M. 1935; amd. Sec. 1, Ch. 222, L. 1939; amd. Sec. 1, Ch. 80, L. 1941; amd. Sec. 1, Ch. 211, L. 1945; amd. Sec. 1, Ch. 20, L. 1955; amd. Sec. 1, Ch. 244, L. 1961; amd. Sec. 1, Ch. 85, L. 1974; amd. Sec. 63, Ch. 350, L. 1974; R.C.M. 1947, 66-801; amd. Sec. 4, Ch. 106, L. 1981; amd. Sec. 4, Ch. 602, L. 1985; amd. Sec. 5, Ch. 88, L. 1989; amd. Sec. 3, Ch. 473, L. 1993; amd. Sec. 4, Ch. 305, L. 1997; amd. Sec. 38, Ch. 492, L. 1997.

37-31-303. Application for license to practice or teach. An applicant for a license to practice or teach cosmetology or for a license to practice manicuring must qualify by filing an application prescribed by the board and by taking and passing the examination prescribed by the board. The license must be renewed annually under 37-31-322.

History: En. Sec. 3, Ch. 104, L. 1929; amd. Sec. 1, Ch. 14, L. 1931; re-en. Sec. 3228.3, R.C.M. 1935; amd. Sec. 3, Ch. 222, L. 1939; amd. Sec. 1, Ch. 210, L. 1945; amd. Sec. 3, Ch. 244, L. 1961; amd. Sec. 1, Ch. 167, L. 1969; amd. Sec. 2, Ch. 168, L. 1971; amd. Sec. 1, Ch. 268, L. 1973; amd. Sec. 1, Ch. 310, L. 1973; amd. Sec. 65, Ch. 350, L. 1974; R.C.M. 1947, 66-803(3); amd. Sec. 5, Ch. 602, L. 1985; amd. Sec. 6, Ch. 88, L. 1989.

37-31-304. Qualifications of applicants for license to practice. (1) Before a person may practice cosmetology, the person shall obtain a license to practice cosmetology from the department. Before a person may practice manicuring, the person shall obtain a license to practice manicuring from the department unless the person is licensed to practice cosmetology. Before a person may practice esthetics, the person shall obtain a license to practice esthetics from the department unless the person is already licensed to practice cosmetology.

(2) (a) To be eligible to take the examination to practice cosmetology, the applicant may not be less than 18 years of age, must be of good moral character, and must possess a high school diploma or the equivalent of a high school diploma recognized by the superintendent of public instruction. A person may apply to the board for an exception to the educational requirement of a high school diploma or the equivalent of a high school diploma. The board shall adopt by rule procedures for granting an exception. The applicant must have completed a course of study of at least 2,000 hours in a registered cosmetology school and must have received a diploma from the cosmetology school or must have completed the course of study in cosmetology prescribed by the board.

(b) A person qualified under subsection (2)(a) shall file with the department a written application to take the examination and shall deposit with the department the required examination fee and pass an examination as to fitness to practice cosmetology.

(3) (a) To be eligible to take the examination to practice manicuring, an applicant may not be less than 18 years of age; must be of good moral character; possess a high school diploma, the equivalent of a high school diploma recognized by the superintendent of public instruction, or a certificate of completion from a vocational-technical program; and must have completed a course of study prescribed by the board in a registered school of cosmetology or a registered school of manicuring. A person may apply to the board for an exception to the educational requirement of a high school diploma, the equivalent of a high school diploma, or a vocational-technical program certificate of completion. The board shall adopt by rule procedures for granting an exception.

(b) A person qualified under subsection (3)(a) shall file with the department a written application to take the examination and deposit with the department the required examination fee.

(4) (a) To be eligible to take the examination to practice esthetics, an applicant:

(i) may not be under 18 years of age;

(ii) must be of good moral character;

(iii) must possess a high school diploma, the equivalent of a high school diploma recognized by the superintendent of public instruction, or a certificate of completion from a vocational-technical program; and

(iv) must have completed a course of study prescribed by the board and consisting of not less than 650 hours of training and instruction in a registered school of cosmetology or a registered school of esthetics. A person may apply to the board for an exception to the educational requirement of a high school diploma, the equivalent of a high school diploma, or a vocational-technical program certificate of completion. The board shall adopt by rule procedures for granting an exception.

(b) A person qualified under subsection (4)(a) shall:

(i) file with the department a written application to take the examination;

(ii) deposit with the department the required examination fee; and

(iii) pass an examination as to fitness to practice esthetics.

History: En. Sec. 3, Ch. 104, L. 1929; amd. Sec. 1, Ch. 14, L. 1931; re-en. Sec. 3228.3, R.C.M. 1935; amd. Sec. 3, Ch. 222, L. 1939; amd. Sec. 1, Ch. 210, L. 1945; amd. Sec. 3, Ch. 244, L. 1961; amd. Sec. 1, Ch. 167, L. 1969; amd. Sec. 2, Ch. 168, L. 1971; amd. Sec. 1, Ch. 268, L. 1973; amd. Sec. 1, Ch. 310, L. 1973; amd. Sec. 65, Ch. 350, L. 1974; R.C.M. 1947, 66-803(1); amd. Sec. 2, Ch. 260, L. 1985; amd. Sec. 6, Ch. 602, L. 1985; amd. Sec. 34, Ch. 658, L. 1987; amd. Sec. 1, Ch. 520, L. 1989; amd. Sec. 4, Ch. 473, L. 1993; amd. Sec. 26, Ch. 308, L. 1995; amd. Sec. 5, Ch. 305, L. 1997.

37-31-305. Qualifications of applicants for license to teach. (1) Before a person may teach manicuring or esthetics to persons seeking only to be licensed to practice manicuring or esthetics, or to teach cosmetology, the person shall obtain from the department a license to teach cosmetology.

(2) To be eligible to take an examination to obtain a license to teach cosmetology, a person must:

(a) be a graduate of high school or possess an equivalent of a high school diploma recognized by the superintendent of public instruction; and

(b) (i) have a license to practice cosmetology issued by the department and have received a diploma from a registered school of cosmetology approved by the board, certifying satisfactory completion of 650 hours of student teacher training; or

(ii) have been actively engaged as a cosmetologist for 3 continuous years immediately before taking the teacher's examination.

(3) Before a person may teach manicuring to a person seeking only to be licensed to practice manicuring, the person shall, unless already licensed to teach cosmetology, obtain a license from the department to teach manicuring.

(4) To be eligible to take an examination to obtain a license to teach manicuring, a person must:

(a) be a graduate of high school or possess an equivalent of a high school diploma recognized by the superintendent of public instruction; and

(b) (i) have a license to practice manicuring or cosmetology issued by the department and have received a diploma from a registered school licensed as a teacher-training unit certifying satisfactory completion of 650 hours of student teacher training; or

(ii) have been actively engaged as a manicurist or a cosmetologist for 3 continuous years immediately before taking the teacher's examination.

(5) Before a person may teach esthetics to a person seeking only to be licensed to practice esthetics, the person shall, unless already licensed to teach cosmetology, obtain a license from the department to teach esthetics.

(6) To be eligible to take an examination to obtain a license to teach esthetics, a person must:

(a) be a graduate of high school or possess an equivalent of a high school diploma recognized by the superintendent of public instruction; and

(b) (i) have a license to practice esthetics or cosmetology issued by the department and have received a diploma from a registered school licensed as a teacher-training unit certifying satisfactory completion of 650 hours of student teacher training; or

(ii) have been actively engaged as an esthetician or a cosmetologist for 3 continuous years immediately before taking the teacher's examination.

History: En. Sec. 3, Ch. 104, L. 1929; amd. Sec. 1, Ch. 14, L. 1931; re-en. Sec. 3228.3, R.C.M. 1935; amd. Sec. 3, Ch. 222, L. 1939; amd. Sec. 1, Ch. 210, L. 1945; amd. Sec. 3, Ch. 244, L. 1961; amd. Sec. 1, Ch. 167, L. 1969; amd. Sec. 2, Ch. 168, L. 1971; amd. Sec. 1, Ch. 268, L. 1973; amd. Sec. 1, Ch. 310, L. 1973; amd. Sec. 65, Ch. 350, L. 1974; R.C.M. 1947, 66-803(2); amd. Sec. 5, Ch. 106, L. 1981; amd. Sec. 3, Ch. 260, L. 1985; amd. Sec. 7, Ch. 602, L. 1985; amd. Sec. 5, Ch. 473, L. 1993; amd. Sec. 6, Ch. 305, L. 1997.

37-31-306. Repealed. Sec. 128, Ch. 429, L. 1995.

History: En. 66-808.1 by Sec. 5, Ch. 533, L. 1977; R.C.M. 1947, 66-808.1; amd. Sec. 6, Ch. 106, L. 1981.

37-31-307. Repealed. Sec. 128, Ch. 429, L. 1995.

History: En. Sec. 3, Ch. 104, L. 1929; amd. Sec. 1, Ch. 14, L. 1931; re-en. Sec. 3228.3, R.C.M. 1935; amd. Sec. 3, Ch. 222, L. 1939; amd. Sec. 1, Ch. 210, L. 1945; amd. Sec. 3, Ch. 244, L. 1961; amd. Sec. 1, Ch. 167, L. 1969; amd. Sec. 2, Ch. 168, L. 1971; amd. Sec. 1, Ch. 268, L. 1973; amd. Sec. 1, Ch. 310, L. 1973; amd. Sec. 65, Ch. 350, L. 1974; R.C.M. 1947, 66-803(5); amd. Sec. 1, Ch. 460, L. 1979; amd. Sec. 7, Ch. 106, L. 1981; amd. Sec. 1, Ch. 29, L. 1989.

37-31-308. Examination — reexamination — exemption for persons with disabilities. (1) Examinations for a license to practice cosmetology, manicuring, or esthetics or to teach cosmetology, manicuring, or esthetics must be held at places and times specified by the board. The examinations must be supervised by the board. The examinations may not be confined to a specific method or system. The examinations must be conducted by persons who hold current licenses to practice in the profession for which the applicant is being examined.

(2) Anyone failing twice to pass the examination for a license to practice cosmetology may not apply to retake the examination:

(a) sooner than 6 months after the date of the second failure; or

(b) until the applicant has taken 200 hours additional training at a registered school of cosmetology approved by the board.

(3) Anyone failing twice to pass the examination for a license to practice manicuring or a license to practice esthetics shall meet the additional requirements prescribed by the board before applying to retake the examination.

(4) Anyone failing twice to pass the examination for a license to teach cosmetology, manicuring, or esthetics shall wait 1 year before reapplying to take the examination. Upon reapplying, the applicant shall provide certification of completion of 500 hours of teacher training during that year in a registered school licensed as a teacher training unit.

(5) Persons with physical disabilities trained for cosmetology, manicuring, or esthetics by the department of public health and human services are, for a period of 1 year immediately following their graduation, exempt from the examination and the fees described in 37-31-323. On certification from the department of public health and human services that a department of public health and human services beneficiary has successfully completed the required training in a cosmetology, a manicuring, or an esthetics school, the department shall issue the person the necessary certificate or license to practice the profession in this state.

History: (1), (3)En. Sec. 8, Ch. 104, L. 1929; amd. Sec. 1, Ch. 85, L. 1935; re-en. Sec. 3228.8, R.C.M. 1935; amd. Sec. 7, Ch. 222, L. 1939; amd. Sec. 69, Ch. 350, L. 1974; Sec. 66-808, R.C.M. 1947; (2)En. Sec. 3, Ch. 104, L. 1929; amd. Sec. 1, Ch. 14, L. 1931; re-en. Sec. 3228.3, R.C.M. 1935; amd. Sec. 3, Ch. 222, L. 1939; amd. Sec. 1, Ch. 210, L. 1945; amd. Sec. 3, Ch. 244, L. 1961; amd. Sec. 1, Ch. 167, L. 1969; amd. Sec. 2, Ch. 168, L. 1971; amd. Sec. 1, Ch. 268, L. 1973; amd. Sec. 1, Ch. 310, L. 1973; amd. Sec. 65, Ch. 350, L. 1974; Sec. 66-803, R.C.M. 1947; R.C.M. 1947, 66-803(4), 66-808; amd. Sec. 8, Ch. 106, L. 1981; amd. Sec. 4, Ch. 260, L. 1985; amd. Sec. 8, Ch. 602, L. 1985; amd. Sec. 7, Ch. 88, L. 1989; amd. Sec. 6, Ch. 473, L. 1993; amd. Sec. 98, Ch. 546, L. 1995; amd. Sec. 7, Ch. 305, L. 1997; amd. Sec. 29, Ch. 472, L. 1997.

37-31-309. Booth rental license. No person may receive a booth rental license under 37-31-302 without proving to the satisfaction of the board that the booth will be used and maintained in compliance with the rules and regulations promulgated by the board, including sanitary rules prescribed under 37-31-204.

History: En. Sec. 9, Ch. 88, L. 1989.

37-31-310 reserved.

37-31-311. Schools — certificate of registration — requirements — bond — curriculum. (1) A person, firm, partnership, or corporation may not operate a school for the purpose of teaching cosmetology, manicuring, or esthetics for compensation unless a certificate of registration has been first obtained from the department. Application for the certificate must be filed with the department on a form prescribed by the board.

(2) A school for teaching cosmetology may not be granted a certificate of registration unless it complies or can comply with the following requirements:

(a) It has in its employ either a licensed teacher who is at all times in the immediate supervision of the work of the school or other teachers who the board determines are necessary for the proper conduct of the school. There may not be more than 25 students to each teacher.

(b) It possesses apparatus and equipment the board determines necessary for the ready and full teaching of all subjects or practices of cosmetology.

(c) It maintains a school term of not less than 2,000 hours and prescribes a course of practical training and technical instruction equal to the requirements for board examinations, which course of training and technical instruction must be prescribed by the board.

(d) It keeps a daily record of the attendance of each student, establishes grades, and holds examinations before issuing diplomas.

(e) An owner or person in charge of a school of cosmetology may not permit a person to sleep in or use for residential purposes or for any other purpose that would make the room unsanitary a room used wholly or in part for a school of cosmetology.

(3) A school for teaching manicuring may not be granted a certificate of registration unless it complies with subsections (2)(a) and (2)(d) and the following requirements:

(a) It possesses apparatus and equipment the board determines necessary for the ready and full teaching of all subjects or practices of manicuring.

(b) It maintains a school term and a course of practical training and technical instruction as prescribed by the board.

(c) An owner or person in charge of a school of manicuring may not permit a person to sleep in or use for residential purposes or for any other purpose that would make the room unsanitary a room used wholly or in part for a school of manicuring.

(4) A school for teaching esthetics may not be granted a certificate of registration unless it complies with subsections (2)(a) and (2)(d) and the following requirements:

(a) It possesses apparatus and equipment the board determines necessary for the ready and full teaching of all subjects or practices of esthetics.

(b) It maintains a school term and a course consisting of not less than 650 hours of practical training and technical instruction as prescribed by the board.

(c) An owner or person in charge of a school of esthetics may not permit a person to sleep in or use for residential purposes or for any other purpose that would make the room unsanitary a room used wholly or in part for a school of esthetics.

(5) Licenses or certificates of registration for schools of cosmetology, manicuring, or esthetics may be refused, revoked, or suspended, as provided in 37-31-331.

(6) A teacher or student teacher may not be permitted to practice cosmetology, manicuring, or esthetics on the public in a school of cosmetology, manicuring, or esthetics. A school that enrolls student teachers for a course of student teacher training may not have, at any one time, more than one student teacher for each full-time licensed teacher actively engaged at the school. The student teachers may not substitute for full-time teachers.

(7) The board may make further rules necessary for the proper conduct of schools of cosmetology, manicuring, and esthetics.

(8) The board shall require the person, firm, partnership, or corporation operating a school of cosmetology, manicuring, or esthetics to furnish a good and sufficient bond in the amount of $5,000 and in a form and manner prescribed by the board.

(9) A professional cosmetology, manicuring, or esthetics salon may not be operated in connection with a school of cosmetology, of manicuring, or of esthetics.

(10) The board may, by rule, establish a suitable curriculum for teachers' training in registered schools of cosmetology, manicuring, or esthetics.

History: En. Sec. 3, Ch. 104, L. 1929; amd. Sec. 1, Ch. 14, L. 1931; re-en. Sec. 3228.3, R.C.M. 1935; amd. Sec. 3, Ch. 222, L. 1939; amd. Sec. 1, Ch. 210, L. 1945; amd. Sec. 3, Ch. 244, L. 1961; amd. Sec. 1, Ch. 167, L. 1969; amd. Sec. 2, Ch. 168, L. 1971; amd. Sec. 1, Ch. 268, L. 1973; amd. Sec. 1, Ch. 310, L. 1973; amd. Sec. 65, Ch. 350, L. 1974; R.C.M. 1947, 66-803(6) thru (8); amd. Sec. 9, Ch. 602, L. 1985; amd. Sec. 7, Ch. 473, L. 1993; amd. Sec. 8, Ch. 305, L. 1997.

37-31-312. Inspection. (1) The department shall appoint one or more inspectors, each of whom shall devote time to inspecting cosmetology salons and performing other duties as the department, in cooperation with the board, may direct. The inspectors may enter a cosmetology salon, manicuring salon, esthetics salon, booth, school of cosmetology, school of manicuring, or school of esthetics during business hours for the purpose of inspection, and the refusal of a licensee to permit the inspection during business hours is cause for revocation of the license.

(2) Upon application for a license, a cosmetology, manicuring, or esthetics salon shall pay an initial inspection fee prescribed by the board.

(3) The board may authorize the department to grant to a cosmetology, manicuring, or esthetics salon, upon payment of the initial inspection fee, a temporary permit authorizing the cosmetology, manicuring, or esthetics salon to operate for a period not to exceed 90 days or until the inspector is able to make the inspection, whichever event occurs first. This temporary permit is not renewable.

(4) The department shall cause an inspector, appointed as provided in subsection (1), to conduct an annual inspection of each cosmetology, manicuring, and esthetics salon in the state.

History: (1)En. Sec. 13, Ch. 104, L. 1929; re-en. Sec. 3228.13, R.C.M. 1935; amd. Sec. 11, Ch. 222, L. 1939; amd. Sec. 73, Ch. 350, L. 1974; Sec. 66-813, R.C.M. 1947; (2), (3)En. Sec. 66-813.1 by Sec. 2, Ch. 85, L. 1974; amd. Sec. 2, Ch. 305, L. 1977; Sec. 66-813.1, R.C.M. 1947; R.C.M. 1947, 66-813, 66-813.1; (4)En. Sec. 9, Ch. 106, L. 1981; amd. Sec. 56, Ch. 345, L. 1981; amd. Sec. 5, Ch. 260, L. 1985; amd. Sec. 10, Ch. 602, L. 1985; amd. Sec. 8, Ch. 88, L. 1989; amd. Sec. 1, Ch. 458, L. 1991; amd. Sec. 8, Ch. 473, L. 1993; amd. Sec. 9, Ch. 305, L. 1997.

37-31-313 through 37-31-320 reserved.

37-31-321. Issuance of licenses and certificates. If the board finds that an applicant for examination or for certificate of registration has complied with the requirements of this chapter and has paid the required fee, the board shall admit the applicant to examination and shall authorize the department to issue a license or certificate of registration to those who have successfully passed the examination or are entitled to the certificate of registration under this chapter.

History: En. Sec. 7, Ch. 104, L. 1929; re-en. Sec. 3228.7, R.C.M 1935; amd. Sec. 6, Ch. 222, L. 1939; amd. Sec. 68, Ch. 350, L. 1974; R.C.M. 1947, 66-807.

37-31-322. Renewal — delinquency fee. (1) Licenses and certificates may not be issued for longer than 1 year unless otherwise provided by department rule. Licenses and certificates expire on the date set by department rule and may be renewed. Licenses and certificates may be renewed by application made on or before the renewal date and by the payment of a required renewal fee. Expired licenses and certificates may be renewed under rules made by the board, but the right to renew an expired license or certificate terminates after 10 years of nonpayment. The renewal fee may not exceed twice the fee for a 2-year renewal or three times the fee for a 3-year renewal and must be as set by the board.

(2) A fee prescribed by the board must be charged, in addition to other fees fixed by law, for renewal applications of licenses and certificates made after December 31 of each year or other predetermined renewal deadline.

History: En. Sec. 16, Ch. 104, L. 1929; re-en. Sec. 3228.16, R.C.M. 1935; amd. Sec. 13, Ch. 222, L. 1939; amd. Sec. 1, Ch. 115, L. 1961; amd. Sec. 1, Ch. 132, L. 1967; amd. Sec. 75, Ch. 350, L. 1974; amd. Sec. 3, Ch. 305, L. 1977; R.C.M. 1947, 66-816; amd. Sec. 16, Ch. 22, L. 1979; amd. Sec. 57, Ch. 345, L. 1981; amd. Sec. 6, Ch. 260, L. 1985; amd. Sec. 11, Ch. 602, L. 1985; amd. Sec. 9, Ch. 473, L. 1993; amd. Sec. 94, Ch. 429, L. 1995.

37-31-323. Fees. (1) Fees for licenses and certificates of registration shall be paid to the department in amounts prescribed by the board.

(2) The license and registration fees shall be paid annually, unless otherwise provided by board rule, in advance to the department.

(3) No other or additional license or registration fee may be imposed by a municipal corporation or other political subdivision of this state for the practice or teaching of cosmetology.

History: En. Sec. 15, Ch. 104, L. 1929; re-en. Sec. 3228.15, R.C.M. 1935; amd. Sec. 12, Ch. 222, L. 1939; amd. Sec. 3, Ch. 80, L. 1941; amd. Sec. 3, Ch. 20, L. 1955; amd. Sec. 2, Ch. 140, L. 1959; amd. Sec. 1, Ch. 131, L. 1963; amd. Sec. 1, Ch. 324, L. 1971; amd. Sec. 74, Ch. 350, L. 1974; amd. Sec. 4, Ch. 533, L. 1977; R.C.M. 1947, 66-815; amd. Sec. 10, Ch. 106, L. 1981; amd. Sec. 58, Ch. 345, L. 1981.

37-31-324. Deposit of fees. All fees collected by the department under this chapter shall be deposited in the state special revenue fund for the use of the board, subject to 37-1-101(6).

History: En. Sec. 9, Ch. 104, L. 1929; re-en. Sec. 3228.9, R.C.M. 1935; amd. Sec. 8, Ch. 222, L. 1939; amd. Sec. 135, Ch. 147, L. 1963; amd. Sec. 1, Ch. 133, L. 1967; amd. Sec. 1, Ch. 224, L. 1974; amd. Sec. 70, Ch. 350, L. 1974; amd. Sec. 28, Ch. 439, L. 1975; amd. Sec. 1, Ch. 531, L. 1977; R.C.M. 1947, 66-809(part); amd. Sec. 1, Ch. 277, L. 1983.

37-31-325 through 37-31-330 reserved.

37-31-331. Refusal, revocation, or suspension of licenses — grounds — notice and hearing. (1) The board may refuse to issue, may refuse to renew, or may revoke or suspend a license in any one of the following cases:

(a) failure of a person, firm, partnership, or corporation operating a cosmetology salon, manicuring salon, esthetics salon, or a school of cosmetology, manicuring, or esthetics to comply with this chapter;

(b) failure to comply with the sanitary rules adopted by the board and approved by the department of public health and human services for the regulation of cosmetology salons, manicuring salons, esthetics salons, or schools of cosmetology, manicuring, or esthetics;

(c) gross malpractice;

(d) continued practice by a person who knowingly has an infectious or contagious disease;

(e) habitual drunkenness or habitual addiction to the use of morphine or any habit-forming drug;

(f) permitting a certificate of registration or license to be used when the holder is not personally, actively, and continuously engaged in business; or

(g) failure to display the license.

(2) The board may not refuse to authorize the department to issue or renew a license or to revoke or suspend a license already issued until after notice and opportunity for a hearing.

History: En. Sec. 11, Ch. 104, L. 1929; re-en. Sec. 3228.11, R.C.M. 1935; amd. Sec. 10, Ch. 222, L. 1939; amd. Sec. 71, Ch. 350, L. 1974; R.C.M. 1947, 66-811; amd. Sec. 12, Ch. 602, L. 1985; amd. Sec. 10, Ch. 473, L. 1993; amd. Sec. 69, Ch. 418, L. 1995; amd. Sec. 99, Ch. 546, L. 1995; amd. Sec. 10, Ch. 305, L. 1997.

37-31-332. Repealed. Sec. 128, Ch. 429, L. 1995.

History: En. Sec. 3, Ch. 104, L. 1929; amd. Sec. 1, Ch. 14, L. 1931; re-en. Sec. 3228.3, R.C.M. 1935; amd. Sec. 3, Ch. 222, L. 1939; amd. Sec. 1, Ch. 210, L. 1945; amd. Sec. 3, Ch. 244, L. 1961; amd. Sec. 1, Ch. 167, L. 1969; amd. Sec. 2, Ch. 168, L. 1971; amd. Sec. 1, Ch. 268, L. 1973; amd. Sec. 1, Ch. 310, L. 1973; amd. Sec. 65, Ch. 350, L. 1974; R.C.M. 1947, 66-803(9).

37-31-333. Appeal from actions of board. An appeal may be taken from any actions of the board to the district court of the county in which the applicant resides.

History: En. Sec. 14, Ch. 104, L. 1929; re-en. Sec. 3228.14, R.C.M. 1935; R.C.M. 1947, 66-814.

Cross-References

Judicial review of contested cases, Title 2, ch. 4, part 7.

37-31-334. Penalty — injunction. (1) The commission of any of the acts prohibited as provided in 37-31-301 or the violation of any other provision in this chapter shall be a misdemeanor punishable by a fine or imprisonment or both fine and imprisonment.

(2) Regardless of any penalties provided in this chapter and as an additional remedy, the district courts of the state of Montana are vested with jurisdiction to restrain and enjoin any violation or threatened violation of the requirements of this chapter as a nuisance per se or otherwise and the board, the attorney general, or any county attorney may institute proceedings in equity for the purpose of obtaining equitable relief against violations of the provisions of this chapter.

History: En. Sec. 17, Ch. 104, L. 1929; amd. Sec. 1, Ch. 13, L. 1931; re-en. Sec. 3228.17, R.C.M. 1935; amd. Sec. 14, Ch. 222, L. 1939; amd. Sec. 1, Ch. 140, L. 1959; R.C.M. 1947, 66-817(C), (D).

Cross-References

Duties of Attorney General, 2-15-501.

Issuance of injunctions on nonjudicial days, 3-1-302, 3-5-302.

Contempts, Title 3, ch. 1, part 5.

Prosecutorial duties of County Attorney, 7-4-2712.

Duties of County Attorney relating to state matters, 7-4-2716.

Injunctions, Rule 65, M.R.Civ.P. (see Title 25, ch. 20); Title 27, ch. 19.

Affidavits, Title 26, ch. 1, part 10.

Nuisances, Title 27, ch. 30.

Disciplinary authority of boards — injunctions, 37-1-136.

Penalty when none specified, 46-18-212.

CHAPTER 32

ELECTROLOGY

Part 1 — General

37-32-101. Purpose.
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Part 1
General

37-32-101. Purpose. The legislature finds and declares that the practice of electrology in Montana affects the public health, safety, and welfare and should therefore be subject to regulation and control in the public interest in order to protect the public from the unauthorized and unqualified practice of electrology.

History: En. 66-3601 by Sec. 1, Ch. 143, L. 1975; R.C.M. 1947, 66-3601.

37-32-102. Definitions. As used in this chapter, the following definitions apply:

(1) "Approved school" means a school which the board has approved as having a course of instruction or education and training in electrology which meets the criteria established by the board.

(2) "Board" means the board of cosmetologists.

(3) "Department" means the department of commerce.

(4) "Electrology" means the study and professional practice of permanently removing superfluous hair by destroying the hair roots by passage of an electric current with an electrified needle. Electrology as defined in this chapter shall include electrolysis and/or thermolysis. Electrology does not include the practice of pilethermology, which is the study and professional

practice of removing superfluous hair by passage of radio frequency energy with electronic tweezers and similar devices.

History: En. 66-3602 by Sec. 2, Ch. 143, L. 1975; R.C.M. 1947, 66-3602; amd. Sec. 1, Ch. 482, L. 1979; amd. Sec. 3, Ch. 274, L. 1981; amd. Sec. 1, Ch. 412, L. 1981.

37-32-103. Exemptions. Nothing in this chapter prevents a licensed medical doctor from performing the work of an electrologist.

History: En. 66-3603 by Sec. 3, Ch. 143, L. 1975; R.C.M. 1947, 66-3603(2); amd. Sec. 11, Ch. 106, L. 1981.

Part 2
Board of Cosmetologists

Part Cross-References

Montana Administrative Procedure Act, Title 2, ch. 4.

Allocation of boards for administrative purposes, 2-15-121.

Quasi-judicial boards, 2-15-124.

Board established, 2-15-1857.

Duties of Department, Director, and boards, Title 37, ch. 1, part 1.

37-32-201. Rulemaking power. (1) The board may adopt rules in accordance with the Montana Administrative Procedure Act to implement this chapter and to properly regulate this profession.

(2) Rules adopted by the board may provide for:

(a) the conduct of board business;

(b) the qualifications, examination, and licensure of applicants to practice or teach electrology;

(c) standards and requirements for licensure of premises to be used for the practice or teaching of electrology;

(d) the curriculum and conduct of schools of electrology;

(e) sanitary standards for licensees, salons, and schools, with particular reference to the precautions necessary to prevent the creation and spread of infectious and contagious diseases; and

(f) the conduct of persons, salons, and schools licensed under this chapter.

History: En. 66-3607 by Sec. 7, Ch. 143, L. 1975; amd. Sec. 32, Ch. 101, L. 1977; R.C.M. 1947, 66-3607(1); amd. Sec. 1, Ch. 40, L. 1985.

Part 3
Licensing

Part Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

Licensing to follow contested case procedure, 2-4-631.

Suspension of license fees for persons in military service, 10-1-605.

Duty of Department to administer and grade examinations, 37-1-101.

Reporting disciplinary actions against licensees, 37-1-105.

Duty of Board to adopt and enforce licensing and certification rules, 37-1-131.

Licensing boards to establish fees commensurate with costs, 37-1-134.

License investigation and review — record access, 37-1-135.

Licensure of criminal offenders, Title 37, ch. 1, part 2.

Nondiscrimination in licensing, 49-3-204.

37-32-301. License required. (1) No person may represent himself to be an electrologist or engage in the practice or teaching of electrology unless he is licensed under this chapter.

(2) Applications for licensure or renewal of a license must be made to the department on forms provided by the department. The application must be accompanied by the appropriate fee.

History: En. 66-3603 by Sec. 3, Ch. 143, L. 1975; R.C.M. 1947, 66-3603(1); amd. Sec. 2, Ch. 40, L. 1985.

37-32-302. Qualifications — examination — issuance of license. (1) Before a license to practice electrology is granted, the applicant shall meet all of the following requirements:

(a) be at least 18 years of age;

(b) furnish satisfactory evidence of education, instruction, training, and experience in the field of electrology as the board may fix by rule;

(c) pass an examination to the satisfaction of the board in the field of electrology if it is required by the board.

(2) The department shall issue the electrologist license only after it is granted by the board and all requirements of this chapter have been met.

History: En. 66-3604 by Sec. 4, Ch. 143, L. 1975; R.C.M. 1947, 66-3604.

37-32-303. Repealed. Sec. 128, Ch. 429, L. 1995.

History: En. 66-3606 by Sec. 6, Ch. 143, L. 1975; R.C.M. 1947, 66-3606.

37-32-304. Electrology salon or school license required. (1) The premises in which an electrologist or electrologists may practice must be licensed in accordance with rules adopted by the board. Rules adopted by the board shall provide for equipment standards and sanitary rules so that the health of the individual patron is properly protected.

(2) The premises in which electrology is taught must be licensed in accordance with rules adopted by the board pursuant to 37-32-201.

(3) Applications for licensure or renewal under this section must be made to the department on forms provided by the department. Applications must be accompanied by the proper licensure or renewal fee and the inspection fee required by 37-32-306.

History: En. 66-3605 by Sec. 5, Ch. 143, L. 1975; R.C.M. 1947, 66-3605; amd. Sec. 3, Ch. 40, L. 1985.

37-32-305. Fees — renewal — deposit of money collected. (1) The fee for an original electrologist license must be set by the board. The renewal is automatic, unless revoked or suspended for cause, and the renewal fee must be set by the board.

(2) The fee for an original electrologist salon license fee must be the same as that for cosmetology salons. The renewal fee must be the same as that for cosmetology salons.

(3) A license issued under this chapter expires on the date set by department rule and may be renewed at periodic intervals as determined by department rule. Failure to renew subjects the licensee to a late renewal fee prescribed by the board to be added to the regular renewal fee. The right to renew by payment of the late renewal fee expires after 3 years of nonpayment.

(4) All fees or money collected by the department under this chapter must be deposited in the state special revenue fund for the use of the board in administration of the chapter.

History: En. 66-3608 by Sec. 8, Ch. 143, L. 1975; amd. Sec. 11, Ch. 533, L. 1977; R.C.M. 1947, 66-3608; amd. Sec. 59, Ch. 345, L. 1981; amd. Sec. 1, Ch. 277, L. 1983; amd. Sec. 95, Ch. 429, L. 1995; amd. Sec. 39, Ch. 492, L. 1997.

37-32-306. Inspection. (1) The department shall appoint inspectors to inspect electrology schools and salons and perform other duties as the department may direct. Inspectors may enter electrology salons and schools during business hours for the purpose of evaluating whether the premises qualify for licensure or otherwise meet standards established by the board.

(2) Upon application for issuance of a license, an electrology salon or school shall pay an inspection fee prescribed by the board.

(3) The board may authorize the department to grant an electrology salon or school, upon payment of an inspection fee, a temporary permit authorizing the electrology establishment to operate for a period of not to exceed 90 days or until an inspector is able to make the inspection, whichever event occurs first. This temporary permit is not renewable.

(4) The board may conduct periodic inspections of electrology salons and schools within this state to determine compliance with this chapter and rules adopted to implement it.

History: En. Sec. 4, Ch. 40, L. 1985.

37-32-307 through 37-32-309 reserved.

37-32-310. Repealed. Sec. 128, Ch. 429, L. 1995.

History: En. Sec. 5, Ch. 40, L. 1985.

37-32-311. Penalty. Violation of this chapter or of the rules adopted under it is a misdemeanor punishable by a fine, imprisonment, or by both fine and imprisonment.

History: En. 66-3607 by Sec. 7, Ch. 143, L. 1975; amd. Sec. 32, Ch. 101, L. 1977; R.C.M. 1947, 66-3607(2).

Cross-References

Disciplinary authority of boards — injunctions, 37-1-136.

Penalty when none specified, 46-18-212.

CHAPTER 33

MASSAGE THERAPY

(Repealed. Sec. 7, Ch. 84, L. 1983)

Chapter Compiler's Comments

Histories of Repealed Sections:

37-33-101. En. Sec. 1, Ch. 302, L. 1967; amd. Sec. 26, Ch. 101, L. 1977; R.C.M. 1947, 66-2901.

37-33-102. En. Sec. 2, Ch. 302, L. 1967; amd. Sec. 1, Ch. 321, L. 1974; amd. Sec. 283, Ch. 350, L. 1974; amd. Sec. 26, Ch. 101, L. 1977; R.C.M. 1947, 66-2902.

37-33-103. En. Sec. 14, Ch. 302, L. 1967; amd. Sec. 8, Ch. 321, L. 1974; R.C.M. 1947, 66-2914; amd. Sec. 1, Ch. 32, L. 1979.

37-33-104. En. Sec. 8, Ch. 302, L. 1967; amd. Sec. 5, Ch. 321, L. 1974; amd. Sec. 289, Ch. 350, L. 1974; amd. Sec. 26, Ch. 101, L. 1977; R.C.M. 1947, 66-2908(part).

37-33-201. En. Sec. 4, Ch. 302, L. 1967; amd. Sec. 1, Ch. 243, L. 1973; amd. Sec. 2, Ch. 321, L. 1974; amd. Sec. 285, Ch. 350, L. 1974; amd. Sec. 26, Ch. 101, L. 1977; R.C.M. 1947, 66-2904(1), (2).

37-33-202. En. Sec. 10, Ch. 302, L. 1967; amd. Sec. 7, Ch. 321, L. 1974; amd. Sec. 291, Ch. 350, L. 1974; amd. Sec. 43, Ch. 439, L. 1975; R.C.M. 1947, 66-2910(3), (4); amd. Sec. 26, Ch. 474, L. 1981.

37-33-203. En. Sec. 11, Ch. 302, L. 1967; amd. Sec. 26, Ch. 101, L. 1977; R.C.M. 1947, 66-2911.

37-33-204. En. Sec. 4, Ch. 302, L. 1967; amd. Sec. 1, Ch. 243, L. 1973; amd. Sec. 2, Ch. 321, L. 1974; amd. Sec. 285, Ch. 350, L. 1974; amd. Sec. 26, Ch. 101, L. 1977; R.C.M. 1947, 66-2904(3).

37-33-301. En. Sec. 5, Ch. 302, L. 1967; amd. Sec. 3, Ch. 321, L. 1974; amd. Sec. 286, Ch. 350, L. 1974; amd. Sec. 26, Ch. 101, L. 1977; R.C.M. 1947, 66-2905(1).

37-33-302. En. Sec. 6, Ch. 302, L. 1967; amd. Sec. 4, Ch. 321, L. 1974; amd. Sec. 287, Ch. 350, L. 1974; amd. Sec. 26, Ch. 101, L. 1977; R.C.M. 1947, 66-2906; amd. Sec. 60, Ch. 345, L. 1981.

37-33-303. En. Sec. 5, Ch. 302, L. 1967; amd. Sec. 3, Ch. 321, L. 1974; amd. Sec. 286, Ch. 350, L. 1974; amd. Sec. 26, Ch. 101, L. 1977; R.C.M. 1947, 66-2905(2).

37-33-304. En. Sec. 7, Ch. 302, L. 1967; amd. Sec. 288, Ch. 350, L. 1974; amd. Sec. 26, Ch. 101, L. 1977; R.C.M. 1947, 66-2907.

37-33-305. En. Sec. 12, Ch. 302, L. 1967; amd. Sec. 26, Ch. 101, L. 1977; R.C.M. 1947, 66-2912; amd. Sec. 61, Ch. 345, L. 1981.

37-33-306. En. Sec. 9, Ch. 302, L. 1967; amd. Sec. 6, Ch. 321, L. 1974; amd. Sec. 290, Ch. 350, L. 1974; amd. Sec. 10, Ch. 533, L. 1977; R.C.M. 1947, 66-2909; amd. Sec. 2, Ch. 32, L. 1979; amd. Sec. 62, Ch. 345, L. 1981.

37-33-307. En. Sec. 10, Ch. 302, L. 1967; amd. Sec. 7, Ch. 321, L. 1974; amd. Sec. 291, Ch. 350, L. 1974; amd. Sec. 43, Ch. 439, L. 1975; R.C.M. 1947, 66-2910(1), (2).

37-33-308 through 37-33-310 reserved.

37-33-311. En. Sec. 8, Ch. 302, L. 1967; amd. Sec. 5, Ch. 321, L. 1974; amd. Sec. 289, Ch. 350, L. 1974; amd. Sec. 26, Ch. 101, L. 1977; R.C.M. 1947, 66-2908(part).

37-33-312. En. Sec. 13, Ch. 302, L. 1967; amd. Sec. 26, Ch. 101, L. 1977; R.C.M. 1947, 66-2913.

CHAPTER 34

CLINICAL LABORATORY SCIENCE PRACTITIONERS

Part 1 — General

37-34-101. Short title.
37-34-102. Declaration of policy and purpose.
37-34-103. Definitions.

Part 2 — Board of Clinical Laboratory Science Practitioners

37-34-201. Powers and duties of the board — rulemaking authority.

Part 3 — Licensing

37-34-301. License required.
37-34-302. Exemptions.
37-34-303. Standards for licensure.
37-34-304. Repealed.
37-34-305. Licensure application procedures.
37-34-306. Repealed.
37-34-307. Violation — penalties — injunction — manner of charging violation.
37-34-308. Repealed.

Part 1
General

37-34-101. Short title. This chapter may be cited as the "Clinical Laboratory Science Practice Act".

History: En. Sec. 1, Ch. 345, L. 1993.

37-34-102. Declaration of policy and purpose. The legislature finds and declares that because the practice of clinical laboratory science affects the public health, safety, and welfare of Montana citizens, it is the purpose of this chapter to provide for the common good by regulating and ensuring the qualified and professional practice of clinical laboratory science. The legislature further declares that because clinical laboratory science practitioners provide essential services to other health care providers by furnishing vital information that may be used in the assessment of human health and in the diagnosis, prevention, and treatment of disease or impairment, clinical laboratory tests must be performed by individuals who meet specific standards of competency.

History: En. Sec. 2, Ch. 345, L. 1993.

37-34-103. Definitions. As used in this chapter, the following definitions apply:

(1) "Board" means the board of clinical laboratory science practitioners established in 2-15-1863.

(2) "Clinical laboratory" or "laboratory" means any facility or office in which clinical laboratory tests are performed.

(3) (a) "Clinical laboratory science practitioner" means a health care professional who performs clinical laboratory tests or who is engaged in management, education, consulting, or research in clinical laboratory science.

(b) The term includes laboratory directors, managers, supervisors, clinical laboratory scientists, clinical laboratory specialists, and clinical laboratory technicians who work in a laboratory.

(c) The term does not include:

(i) persons employed by a clinical laboratory to perform supportive functions not related to direct performance of laboratory tests; or

(ii) clinical laboratory trainees.

(4) "Clinical laboratory scientist" means a person who:

(a) performs clinical laboratory tests pursuant to established and approved protocols requiring the exercise of independent judgment and responsibility;

(b) maintains equipment and records;

(c) performs quality assurance activities related to test performance; and

(d) may supervise and teach within a clinical laboratory setting.

(5) "Clinical laboratory specialist" means a person who:

(a) performs laboratory testing in a specialized testing area, such as microbiology, chemistry, immunology, or hematology, according to approved protocols requiring the exercise of independent judgment and responsibility;

(b) maintains equipment and records;

(c) performs quality assurance activities related to test performance; and

(d) may supervise and teach within the specific area of the clinical laboratory.

(6) "Clinical laboratory technician" means a person who performs laboratory tests pursuant to established and approved protocols that require limited exercise of independent judgment and that are performed under the supervision of a clinical laboratory scientist, laboratory supervisor, or laboratory director.

(7) "Clinical laboratory test" or "laboratory test" means:

(a) a microbiological, serological, chemical, hematological, radiobioassay, cytological, biophysical, immunological, cytogenetical, or other examination that is performed on material derived from the human body; or

(b) any other test or procedure conducted by a laboratory or facility that provides information for the assessment of a medical condition or for the diagnosis, prevention, or treatment of a disease.

(8) "Department" means the department of commerce provided for in 2-15-1801.

(9) "License" means the clinical laboratory science license issued under this chapter.

(10) "Practice of clinical laboratory science" means the performance and interpretation of microbiological, serological, chemical, hematological, radiobioassay, cytological, biophysical, immunological, cytogenetical, or other examination on material that is derived from the human body and that provides information for the assessment of a medical condition or for the diagnosis, prevention, or treatment of a disease.

History: En. Sec. 3, Ch. 345, L. 1993.

Part 2

Board of Clinical Laboratory Science Practitioners

37-34-201. Powers and duties of the board — rulemaking authority. (1) The board shall:

(a) meet at least once annually, and at other times as agreed upon, to elect officers and to perform the duties described in this section; and

(b) administer oaths, take affidavits, summon witnesses, and take testimony as to matters within the scope of the board's duties.

(2) The board has the authority to administer and enforce all the powers and duties granted statutorily or adopted administratively.

(3) The board shall adopt rules to administer this chapter. The rules must include but are not limited to:

(a) the development of a license application procedure and acceptable certifications for each category of license;

(b) the establishment of license fees commensurate with actual costs;

(c) the establishment of criteria for educational requirements that, at a minimum, meet the standards set forth in 37-34-303;

(d) the development of procedures for the issuance, renewal, suspension, revocation, and reciprocity of licenses;

(e) the adoption of disciplinary standards for licensees;

(f) the establishment of hearing procedures; and

(g) a requirement that the supervisor of a clinical laboratory technician be accessible at all times that testing is being performed by the technician in order to provide onsite, telephonic, or electronic consultation.

History: En. Sec. 7, Ch. 345, L. 1993; amd. Sec. 96, Ch. 429, L. 1995.

Cross-References

Board — composition — allocation — quasi-judicial — compensation, 2-15-1863.

Part 3

Licensing

37-34-301. License required. A person may not engage in the practice of clinical laboratory science or hold out to the public that the person is a clinical laboratory science practitioner in this state unless the person is licensed pursuant to this chapter.

History: **En. Sec. 4, Ch. 345, L. 1993.**

37-34-302. Exemptions. (1) This chapter does not limit or regulate the practice of licensed physicians, including but not limited to pathologists.

(2) This chapter does not apply to:

(a) any other profession licensed under Title 37 to the extent that the applicable scope of that practice, as defined by statute, rules of the board or agency governing the other profession, or both the statute and rules, authorizes the performance of a clinical laboratory test;

(b) clinical laboratory science practitioners employed by the United States or by any bureau, division, or agency of the United States, while in the discharge of the employee's official duties;

(c) clinical laboratory science practitioners engaged in teaching or research, provided that the results of any examination performed are not used in health maintenance, diagnosis, or treatment of disease;

(d) students or trainees enrolled in a clinical laboratory science education or training program, provided that:

(i) these activities constitute a planned course in the program;

(ii) the persons are designated by a title, such as intern, trainee, or student; and

(iii) the persons work directly under an individual licensed by this state to practice clinical laboratory science;

(e) any person performing only waived tests as provided for in the federal clinical laboratory regulations set forth in 42 CFR part 493;

(f) a perfusionist or cardiopulmonary technician who, as part of a surgical team, performs laboratory tests in an operating room during surgery or during the perioperative and immediate postoperative period; or

(g) clinical laboratory science practitioners, employed by certified rural health clinics, who perform only those basic laboratory services required under federal regulations set forth in 42 CFR 491.9(c)(2).

History: **En. Sec. 5, Ch. 345, L. 1993.**

37-34-303. Standards for licensure. (1) The board shall issue a clinical laboratory scientist license to an individual who meets the qualifications as promulgated by rules of the board. At a minimum, a licensee must be a person who:

(a) has graduated with a baccalaureate degree, including a minimum number of hours in areas or disciplines established by rule by the board; and

(b) has passed a certifying examination approved by the board.

(2) The board shall issue a clinical laboratory specialist license to an individual who has graduated with a baccalaureate degree as described in subsection (1) and has passed a certifying examination covering those fields in which the applicant is eligible and approved by the board. The license must be issued as a clinical laboratory specialist license and must state the designation of the area of specialty.

(3) The board shall issue a clinical laboratory technician license to an individual who meets the qualifications promulgated by the board, including the following minimum qualifications:

(a) completion of an associate degree or 60 semester hours in a science-related discipline;

(b) completion of other equivalent formal education as approved by the board; and

(c) passing a certifying examination approved by the board.

History: En. Sec. 8, Ch. 345, L. 1993.

37-34-304. Repealed. Sec. 128, Ch. 429, L. 1995.

History: En. Sec. 9, Ch. 345, L. 1993.

37-34-305. Licensure application procedures. (1) An applicant shall submit an application for a license to the board upon the forms prescribed and furnished by the board and shall pay an application fee set by the board.

(2) Upon receipt of the application and fee, the board shall issue a license for a clinical laboratory scientist, a clinical laboratory specialist, or a clinical laboratory technician to any person who meets the qualifications specified by the board as set forth in rules adopted by the board pursuant to 37-34-201 and 37-34-303.

(3) A license issued under this chapter must be renewed on or before the date set by department rule.

(4) Except for the assessment provided in 37-1-101(6), money paid for application, license, and license renewal fees must be deposited in the state special revenue fund for use by the board.

History: En. Sec. 10, Ch. 345, L. 1993; amd. Sec. 97, Ch. 429, L. 1995.

37-34-306. Repealed. Sec. 128, Ch. 429, L. 1995.

History: En. Sec. 11, Ch. 345, L. 1993.

37-34-307. Violation — penalties — injunction — manner of charging violation. (1) A person who violates a provision of this chapter or a rule adopted pursuant to this chapter is guilty of a misdemeanor and is punishable by a fine not to exceed $500, by imprisonment in the county jail for a term of not more than 6 months, or both.

(2) Except as provided in 37-34-302, the board may maintain an action to enjoin a person from engaging in the practice of clinical laboratory science until a license to practice is obtained. A person who has been enjoined and who violates the injunction is punishable for contempt of court. The injunction does not relieve the person practicing clinical laboratory science without a license from criminal prosecution. The remedy by injunction is in addition to remedies provided for criminal prosecution of the offender.

(3) When charging a person in a complaint for injunction or in an affidavit, information, or indictment with a violation of law by practicing clinical laboratory science without a license, it is sufficient to charge that the person did, on a certain day and in a certain county, engage in the practice of clinical laboratory science while not having a license to do so, without specifying particular facts concerning the violation.

History: En. Sec. 12, Ch. 345, L. 1993.

37-34-308. Repealed. Sec. 128, Ch. 429, L. 1995.

History: En. Sec. 13, Ch. 345, L. 1993.

CHAPTER 35

CERTIFICATION OF CHEMICAL DEPENDENCY COUNSELORS

Part 1 — General

37-35-101. Purpose.
37-35-102. Definitions.
37-35-103. Department powers and duties.

Part 2 — Certification

37-35-201. Certificate required — exceptions.
37-35-202. Certification requirements — examination — fees.
37-35-203. Renewal of certificate — application and fee.

Part 3 — Regulation

37-35-301. Unprofessional conduct complaint — sanctions.
37-35-302. Penalty.
37-35-303. Deposit of fees.
37-35-304. Transition — transfer of certificates.

Chapter Cross-References

Mandatory dangerous drug information course, 45-9-208, 45-10-108.

Alcoholism and drug dependence, Title 53, ch. 24.

Penalty for driving under influence of alcohol or drugs, 61-8-714.

Part 1

General

37-35-101. Purpose. The legislature finds and declares that because the profession of chemical dependency counseling profoundly affects the lives of people of this state, it is the purpose of this chapter to provide for the common good by ensuring the ethical, qualified, and professional practice of chemical dependency counseling. This chapter and the rules promulgated under 37-35-103 set standards of qualification, education, training, and experience and establish professional ethics for those who seek to engage in the practice of chemical dependency counseling as certified chemical dependency counselors.

History: En. Sec. 1, Ch. 507, L. 1997.

37-35-102. Definitions. As used in this chapter, the following definitions apply:

(1) "Accredited college or university" means a college or university accredited by a regional accrediting association for institutions of higher learning.

(2) "Certified chemical dependency counselor" means a person who has the knowledge and skill necessary to provide the therapeutic process of chemical dependency counseling and who is certified under the provisions of this chapter.

(3) "Chemical dependency" means the use of any chemical substance, legal or illegal, that creates behavior or health problems, or both, resulting in operational impairment. This term includes alcoholism, drug dependency, or

both, that endanger the health, interpersonal relationships, or economic functions of an individual or the public health, safety, or welfare.

(4) "Department" means the department of commerce provided for in 2-15-1801.

History: En. Sec. 2, Ch. 507, L. 1997.

37-35-103. Department powers and duties. (1) The department shall:

(a) examine, certify, and renew the certificates of qualified applicants;

(b) adopt rules:

(i) for eligibility requirements and competency standards;

(ii) prescribing the time, place, content, and passing requirements of the certification and competency examinations and passing scores for certification under 37-35-202;

(iii) for application forms and fees for certification and for renewal and certification expiration dates; and

(iv) defining any unprofessional conduct that is not included in 37-1-316; and

(c) adopt and implement rules for training programs, internships, and continuing education requirements to ensure the quality of chemical dependency counseling.

(2) The department may:

(a) adopt rules necessary to implement the provisions of this chapter;

(b) adopt rules specifying the scope of chemical dependency counseling that are consistent with the education required by 37-35-202; and

(c) establish recertification requirements and procedures that the department considers appropriate.

History: En. Sec. 3, Ch. 507, L. 1997.

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

Part 2

Certification

37-35-201. Certificate required — exceptions. (1) Except as otherwise provided in this chapter, a person may not practice chemical dependency counseling or represent to the public that the person is a certified chemical dependency counselor unless the person is certified under the provisions of this chapter.

(2) This chapter does not prohibit an activity or service:

(a) performed by a qualified member of a profession, such as a physician, lawyer, licensed professional counselor, licensed social worker, licensed psychiatrist, licensed psychologist, nurse, probation officer, court employee, pastoral counselor, or school counselor, consistent with the person's licensure or certification and the code of ethics of the person's profession, as long as the person does not represent by title that the person is a certified chemical dependency counselor. If a person is a qualified member of a profession that is not licensed or certified or for which there is no applicable code of ethics, this section does not prohibit an activity or service of the profession as long as the person does not represent by title that the person is a certified chemical dependency counselor.

(b) of, or use of an official title by, a person employed or acting as a volunteer for a federal, state, county, or municipal agency or an educational, research, or charitable institution if that activity or service or use of that title is a part of the duties of the office or position;

(c) of an employee of a business establishment performed solely for the benefit of the establishment's employees;

(d) of a student, intern, or resident in chemical dependency counseling who is pursuing a course of study at an accredited college or university or who is working in a generally recognized training center if the activity or service constitutes part of the course of study;

(e) of a person who is not a resident of this state if the activity or service is rendered for a period that does not exceed, in the aggregate, 60 days during a calendar year and if the person is authorized under the laws of the state or country of residence to perform the activity or service. However, the person shall report to the department the nature and extent of the activity or service if it exceeds 10 days in a calendar year.

(f) of a person who is working to satisfactorily complete supervised chemical dependency counseling experience required for certification.

(3) This chapter is not intended to limit, preclude, or interfere with the practice of other persons and health care providers licensed by the appropriate agencies of the state of Montana.

History: En. Sec. 4, Ch. 507, L. 1997.

37-35-202. Certification requirements — examination — fees. (1) To be eligible for certification as a chemical dependency counselor, the applicant shall submit an application fee in an amount established by the department by rule and a written application on a form provided by the department that demonstrates that the applicant has completed the eligibility requirements and competency standards as defined by department rule.

(2) A person may apply for certification as a certified chemical dependency counselor if the person has:

(a) received a baccalaureate degree in alcohol and drug studies, psychology, sociology, social work, counseling, or a related field from an accredited college or university;

(b) received an associate of arts degree in alcohol and drug studies, chemical dependency, or substance abuse from an accredited institution; or

(c) successfully completed at least 1 year of formalized training in chemical dependency counseling in a program approved by the department or recognized under the laws of another state.

(3) Prior to becoming eligible to begin the examination process, each person shall complete supervised work experience in a chemical dependency treatment program as defined by the department, in an internship approved by the department, or in a similar program recognized under the laws of another state.

(4) Each applicant shall successfully complete a competency examination process as defined by rules adopted by the department.

(5) A person holding a certificate to practice as a certified chemical dependency counselor in this state may use the title "certified chemical dependency counselor".

History: **En. Sec. 5, Ch. 507, L. 1997.**

37-35-203. Renewal of certificate — application and fee. (1) A certificate expires biennially on the date set by department rule.

(2) A certificate holder may renew a certificate by:

(a) filing an application on a form prescribed by the department; and

(b) paying a renewal fee in an amount established by the department.

(3) A default in the payment of a renewal fee after the date it is due may increase the fee, as prescribed by the department by rule.

(4) It is unlawful for a person who refuses or fails to pay the renewal fee to practice as a certified chemical dependency counselor in this state.

(5) A certificate not renewed within 1 year following its expiration date terminates automatically.

History: **En. Sec. 6, Ch. 507, L. 1997.**

Part 3

Regulation

37-35-301. Unprofessional conduct complaint — sanctions. (1) A formal complaint alleging unprofessional conduct by a certified chemical dependency counselor may be directed to the department. The charges must be made by an affidavit, subscribed and sworn to by the person making it, and filed with the department.

(2) The complaint may allege any unprofessional conduct contained in 37-1-316 or as further defined by department rule that constitutes a threat to the public health, safety, or welfare and that is inappropriate to the practice of a certified chemical dependency counselor.

(3) The director of the department shall appoint a review panel to investigate a complaint of unprofessional conduct directed to the department. The panel must consist of:

(a) two certified chemical dependency counselors;

(b) one employee of the department; and

(c) two members of the public.

(4) The panel shall recommend to the department either that the person be cleared of any charges or that a sanction or combination of sanctions contained in 37-1-312 be imposed.

(5) For the purposes of this section, the department is vested with a board's authority for the purposes of the procedures in 37-1-307 through 37-1-318 regarding unprofessional conduct, and 37-1-301 through 37-1-318 apply to any proceeding under this section.

History: **En. Sec. 7, Ch. 507, L. 1997.**

37-35-302. Penalty. A person convicted of violating any provision of this chapter is guilty of a misdemeanor and shall be fined an amount not to exceed $500, be imprisoned in a county jail for a term not to exceed 6 months, or both.

History: **En. Sec. 8, Ch. 507, L. 1997.**

37-35-303. Deposit of fees. All fees and money received by the department must be deposited in the state treasury to the credit of a state special revenue fund for use by the department in its performance of its duties under this chapter.

History: En. Sec. 9, Ch. 507, L. 1997.

37-35-304. Transition — transfer of certificates. The department shall grant a certificate without the need for further application or other requirements to those persons holding a current, unrestricted certificate as a certified chemical dependency counselor as of July 1, 1997, that was issued by the department of public health and human services.

History: En. Sec. 10, Ch. 507, L. 1997.

CHAPTER 40

SANITARIANS

Part 1 — General

37-40-101. Definitions.
37-40-102. Exemptions.

Part 2 — Board of Sanitarians

37-40-201. Presiding officer — meetings.
37-40-202. Compensation — expenses.
37-40-203. Rulemaking power.

Part 3 — Licensing

37-40-301. License required.
37-40-302. Application — examination — certificate.
37-40-303. Repealed.
37-40-304. Fees — renewal.
37-40-305. Deposit of fees.
37-40-306. Repealed.
37-40-307. Repealed.
37-40-308 through 37-40-310 reserved.
37-40-311. Repealed.
37-40-312. Penalty.

Chapter Cross-References

Publicly employed sanitarians to cooperate concerning water quality, 75-5-106.

Cooperation of sanitarians with reviewing authority, 76-4-106.

Cooperative agreements between sanitarians and Department of Livestock, 81-22-305.

Part 1

General

37-40-101. Definitions. Unless the context requires otherwise, as used in this chapter, the following definitions apply:

(1) "Board" means the board of sanitarians provided for in 2-15-1861.

(2) "Department" means the department of commerce provided for in Title 2, chapter 15, part 18.

(3) "Practice the profession of sanitarian" means:

(a) giving advice on or enforcing compliance with state and local regulations applicable to local government jurisdictions and programs concerning food service, food processing, public accommodations, trailer courts, campgrounds, day-care centers, schools, swimming pools and spas, air pollution, solid and hazardous waste collection and disposal, sewage treatment and disposal, vector control, underground storage tanks, drinking water, land subdivision, and milk sanitation;

(b) cooperating with government agencies on matters of public and environmental health, including epidemiological investigations and emergency response to investigations; and

(c) providing educational and training programs in environmental standards and public health.

(4) "Registered sanitarian" means a sanitarian licensed under this chapter.

(5) "Sanitarian", within the meaning and intent of this chapter, shall mean a person who, by reason of his special knowledge of the physical, biological, and chemical sciences and the principles and methods of public health acquired by professional education and practical experience through inspectional, educational, and/or enforcement duties, is qualified to practice the profession of sanitarian.

(6) "Sanitarian-in-training" means a person who meets the minimum educational qualifications required for a sanitarian's license and who works under the supervision of a licensed sanitarian. Sanitarians-in-training may, with board approval, work in a public health agency for a period not to exceed 1 year and be considered exempt from the licensing and registration requirements of 37-40-301.

History: En. 69-3410 by Sec. 1, Ch. 314, L. 1974; R.C.M. 1947, 69-3410(1) thru (5); amd. Sec. 3, Ch. 274, L. 1981; amd. Sec. 1, Ch. 545, L. 1991.

37-40-102. Exemptions. Persons exempt from the requirements of this chapter are:

(1) any person teaching, lecturing, or engaging in research in environmental sanitation, but only insofar as such activities are performed as part of an academic position in a college or university;

(2) any person who is a registered professional engineer or engineer intern;

(3) any public health officer employed pursuant to 50-2-116;

(4) any person employed by a federal governmental agency, but only at such times as the person is carrying out the functions of his employment;

(5) a state employee unless expressly required by statute, regulation, or position description to be registered as a sanitarian; or

(6) any person not employed by a governmental entity or not under contract with a governmental entity for the performance of an official regulatory function.

History: En. 69-3410 by Sec. 1, Ch. 314, L. 1974; R.C.M. 1947, 69-3410(6); amd. Sec. 2, Ch. 545, L. 1991; amd. Sec. 14, Ch. 108, L. 1995.

Part 2

Board of Sanitarians

Part Cross-References

Right to know, Art. II, sec. 9, Mont. Const.

Open meetings, Title 2, ch. 3, part 2.

Meeting defined, 2-3-202.

Allocation of boards for administrative purposes, 2-15-121.

Quasi-judicial boards, 2-15-124.

Board established, 2-15-1861.

Duties of Department, Director, and boards, Title 37, ch. 1, part 1.

Disrupting meeting as disorderly conduct, 45-8-101.

37-40-201. Presiding officer — meetings. The board shall appoint one of its members presiding officer. The board shall meet at least once a year and at other times as agreed upon.

History: En. 69-3414 by Sec. 5, Ch. 314, L. 1974; amd. Sec. 16, Ch. 453, L. 1977; R.C.M. 1947, 69-3414(2); amd. Sec. 3, Ch. 545, L. 1991; amd. Sec. 20, Ch. 230, L. 1999.

Compiler's Comments

1999 Amendment: Chapter 230 in second sentence substituted "once a year" for "four times annually"; and made minor changes in style. Amendment effective October 1, 1999.

37-40-202. Compensation — expenses. Members of the board shall receive compensation and travel expenses as provided for in 37-1-133.

History: En. 69-3414 by Sec. 5, Ch. 314, L. 1974; amd. Sec. 16, Ch. 453, L. 1977; R.C.M. 1947, 69-3414(1); amd. Sec. 27, Ch. 474, L. 1981.

37-40-203. Rulemaking power. (1) The board may adopt rules, consistent with the purposes of this chapter, as it considers necessary.

(2) The board's rulemaking and hearing functions must be in accordance with the Montana Administrative Procedure Act. The board shall adopt rules:

(a) establishing standards of professional conduct in order to maintain a high standard of integrity, dignity, and competency in the profession of sanitarian, including competency in specific fields of sanitation;

(b) governing the conduct of matters before the board;

(c) governing educational equivalency requirements, as provided in 37-40-302, for registration of sanitarians; and

(d) defining qualifications for sanitarian-in-training status for issuance of the initial permit.

History: En. 69-3418 by Sec. 9, Ch. 314, L. 1974; R.C.M. 1947, 69-3418(1), (3); amd. Sec. 4, Ch. 545, L. 1991; amd. Sec. 98, Ch. 429, L. 1995; amd. Sec. 40, Ch. 492, L. 1997.

Cross-References

Montana Administrative Procedure Act, Title 2, ch. 4.

Part 3

Licensing

Part Cross-References

Licensing to follow contested case procedure, 2-4-631.

Suspension of license fees for persons in military service, 10-1-605.

Duty of Department to administer and grade examinations, 37-1-101.

Duty of Board to adopt and enforce licensing and certification rules, 37-1-131.

Licensing boards to establish fees commensurate with costs, 37-1-134.

Licensing investigation and review — record access, 37-1-135.

Grounds for disciplinary action as grounds for license denial — conditions to new licenses, 37-1-137.

Licensure of criminal offenders, Title 37, ch. 1, part 2.

Nondiscrimination in licensing, 49-3-204.

37-40-301. License required. A person may not practice or offer to practice the profession of sanitarian as defined in this chapter or hold himself out in any manner to be a licensed sanitarian unless the person is licensed and registered under the provisions of this chapter.

History: En. 69-3411 by Sec. 2, Ch. 314, L. 1974; R.C.M. 1947, 69-3411; amd. Sec. 5, Ch. 545, L. 1991.

37-40-302. Application — examination — certificate. (1) A person wishing to practice the profession of sanitarian may apply to the department for registration on a form prescribed by the board.

(2) An applicant must possess a minimum of a bachelor's degree in environmental health or its equivalent from an accredited university or college and must pass a written examination given at a time and place set by the board. The board shall establish procedures for examination and determination of passing scores by rule.

(3) If the applicant meets the board's standards and passes the examination prescribed by the board, the department shall issue a certificate of registration upon payment of the required fee.

(4) Holders of current certificates are entitled to append to their name the initials "R.S.".

History: En. 69-3415 by Sec. 6, Ch. 314, L. 1974; R.C.M. 1947, 69-3415; amd. Sec. 4, Ch. 149, L. 1981; amd. Sec. 6, Ch. 545, L. 1991; amd. Sec. 1, Ch. 16, L. 1993.

37-40-303. Repealed. Sec. 128, Ch. 429, L. 1995.

History: En. 69-3419 by Sec. 10, Ch. 314, L. 1974; R.C.M. 1947, 69-3419; amd. Sec. 5, Ch. 149, L. 1981; amd. Sec. 63, Ch. 345, L. 1981; amd. Sec. 7, Ch. 545, L. 1991.

37-40-304. Fees — renewal. (1) An applicant for a license shall pay a fee set by the board in an amount commensurate with examination and administrative costs.

(2) A registered sanitarian may renew the license by paying a renewal fee and meeting qualifications set by the board.

(3) Renewal fees are due on or before the renewal date set by department rule. If the renewal fee is not paid, the license expires. Licenses which have lapsed for failure to pay renewal fees may be reissued under rules adopted by the board.

History: En. 69-3416 by Sec. 7, Ch. 314, L. 1974; amd. Sec. 12, Ch. 533, L. 1977; R.C.M. 1947, 69-3416; amd. Sec. 6, Ch. 149, L. 1981; amd. Sec. 64, Ch. 345, L. 1981; amd. Sec. 8, Ch. 545, L. 1991; amd. Sec. 99, Ch. 429, L. 1995; amd. Sec. 41, Ch. 492, L. 1997.

37-40-305. Deposit of fees. The board shall adopt a schedule of nonrefundable fees to be charged by the department and to be paid into the state special revenue fund for the use of the board. The fees charged must be reasonably related to the cost incurred in regulating the practice of the profession of sanitarian.

History: En. 69-3417 by Sec. 8, Ch. 314, L. 1974; R.C.M. 1947, 69-3417; amd. Sec. 1, Ch. 277, L. 1983; amd. Sec. 9, Ch. 545, L. 1991.

37-40-306. Repealed. Sec. 12, Ch. 545, L. 1991.

History: En. 69-3421 by Sec. 12, Ch. 314, L. 1974; R.C.M. 1947, 69-3421.

37-40-307. Repealed. Sec. 12, Ch. 545, L. 1991.

History: En. 69-3422 by Sec. 13, Ch. 314, L. 1974; R.C.M. 1947, 69-3422; amd. Sec. 17, Ch. 22, L. 1979; amd. Sec. 7, Ch. 149, L. 1981.

37-40-308 through 37-40-310 reserved.

37-40-311. Repealed. Sec. 128, Ch. 429, L. 1995.

History: En. 69-3418 by Sec. 9, Ch. 314, L. 1974; R.C.M. 1947, 69-3418(2); amd. Sec. 8, Ch. 149, L. 1981; amd. Sec. 10, Ch. 545, L. 1991.

37-40-312. Penalty. (1) A person who offers his services as a sanitarian or uses, assumes, or advertises in any way any title or description tending to convey the impression that he is a registered sanitarian who does not hold the license specified by this chapter is guilty of a misdemeanor and is punishable by a fine not to exceed $500 or imprisonment for not longer than 6 months, or both.

(2) The board may enforce the provisions of this chapter by injunction or any other appropriate proceeding.

History: En. 69-3420 by Sec. 11, Ch. 314, L. 1974; R.C.M. 1947, 69-3420; amd. Sec. 11, Ch. 545, L. 1991.

CHAPTER 41

CESSPOOL, SEPTIC TANK, AND PRIVY CLEANERS
(Repealed)

Part 1 — General
(Repealed)

37-41-101. Repealed.
37-41-102. Repealed.
37-41-103. Repealed.
37-41-104. Repealed.
37-41-105. Repealed.

Part 2 — Licensing
(Repealed)

37-41-201. Repealed.
37-41-202. Repealed.
37-41-203. Repealed.
37-41-204. Repealed.
37-41-205. Repealed.
37-41-206 through 37-41-210 reserved.
37-41-211. Repealed.
37-41-212. Repealed.

Part 1
General
(Repealed)

37-41-101. Repealed. Sec. 12, Ch. 378, L. 1999. *(Repealer effective January 1, 2000.)*

History: En. Sec. 193, Ch. 197, L. 1967; amd. Sec. 1, Ch. 76, L. 1971; amd. Secs. 105, 107, Ch. 349, L. 1974; R.C.M. 1947, 69-5401(part); amd. Sec. 2, Ch. 556, L. 1983.

37-41-102. Repealed. Sec. 12, Ch. 556, L. 1983.

History: En. Sec. 199, Ch. 197, L. 1967; amd. Sec. 6, Ch. 76, L. 1971; amd. Sec. 107, Ch. 349, L. 1974; R.C.M. 1947, 69-5407; amd. Sec. 18, Ch. 22, L. 1979.

37-41-103. Repealed. Sec. 12, Ch. 378, L. 1999. *(Repealer effective January 1, 2000.)*

History: En. Sec. 198, Ch. 197, L. 1967; amd. Sec. 107, Ch. 349, L. 1974; R.C.M. 1947, 69-5406; amd. Sec. 3, Ch. 556, L. 1983.

37-41-104. Repealed. Sec. 12, Ch. 378, L. 1999. *(Repealer effective January 1, 2000.)*

History: En. Sec. 1, Ch. 556, L. 1983; amd. Sec. 70, Ch. 418, L. 1995; amd. Secs. 100, 568, Ch. 546, L. 1995.

37-41-105. Repealed. Sec. 12, Ch. 378, L. 1999. *(Repealer effective January 1, 2000.)*

History: En. Sec. 8, Ch. 556, L. 1983.

Part 2

Licensing
(Repealed)

37-41-201. Repealed. Sec. 12, Ch. 378, L. 1999. *(Repealer effective January 1, 2000.)*

History: En. Sec. 194, Ch. 197, L. 1967; amd. Sec. 2, Ch. 76, L. 1971; amd. Secs. 107, 109, Ch. 349, L. 1974; R.C.M. 1947, 69-5402; amd. Sec. 4, Ch. 556, L. 1983.

37-41-202. Repealed. Sec. 12, Ch. 378, L. 1999. *(Repealer effective January 1, 2000.)*

History: En. Sec. 195, Ch. 197, L. 1967; amd. Sec. 3, Ch. 76, L. 1971; amd. Sec. 109, Ch. 349, L. 1974; R.C.M. 1947, 69-5403; amd. Sec. 5, Ch. 556, L. 1983; amd. Sec. 1, Ch. 392, L. 1991.

37-41-203. Repealed. Sec. 12, Ch. 556, L. 1983.

History: En. Sec. 196, Ch. 197, L. 1967; amd. Sec. 4, Ch. 76, L. 1971; R.C.M. 1947, 69-5404.

37-41-204. Repealed. Sec. 12, Ch. 556, L. 1983.

History: En. Sec. 197, Ch. 197, L. 1967; amd. Sec. 5, Ch. 76, L. 1971; R.C.M. 1947, 69-5405.

37-41-205. Repealed. Sec. 12, Ch. 378, L. 1999. *(Repealer effective January 1, 2000.)*

History: En. Sec. 2, Ch. 392, L. 1991.

37-41-206 through 37-41-210 reserved.

37-41-211. Repealed. Sec. 12, Ch. 378, L. 1999. *(Repealer effective January 1, 2000.)*

History: En. Sec. 193, Ch. 197, L. 1967; amd. Sec. 1, Ch. 76, L. 1971; amd. Secs. 105, 107, Ch. 349, L. 1974; R.C.M. 1947, 69-5401(part); amd. Sec. 6, Ch. 556, L. 1983.

37-41-212. Repealed. Sec. 12, Ch. 378, L. 1999. *(Repealer effective January 1, 2000.)*

History: En. Sec. 200, Ch. 197, L. 1967; amd. Sec. 7, Ch. 76, L. 1971; R.C.M. 1947, 69-5408; amd. Sec. 7, Ch. 556, L. 1983; amd. Sec. 27, Ch. 557, L. 1987.

CHAPTER 42

WATER TREATMENT PLANT OPERATORS

Part 1 — General

37-42-101. Purpose.
37-42-102. Definitions.
37-42-103. Exemption.
37-42-104. Classification of treatment plants and distribution systems.

Part 2 — Water and Wastewater Operators' Advisory Council

37-42-201. Meetings — compensation of members — expenses.
37-42-202. Rulemaking power — examinations — continuing education requirements.
37-42-203. Duty to advise and assist department.

Part 3 — Licensing

37-42-301. Department to certify operators.
37-42-302. Unlawful to operate plant or system without certified operator — department to issue temporary certificates — exception.
37-42-303. Operator of treatment plant or distribution system to be certified — exemption.
37-42-304. Application for operator's certificate — fee.
37-42-305. Certification without examination.
37-42-306. Issuance of operator certificate — display.
37-42-307. Retention of certificate by operators who terminate employment — notification to department.
37-42-308. Annual renewal — fees — revocation for failure to renew — reinstatement — notice of suspension.
37-42-309. Deposit of fees.
37-42-310 through 37-42-320 reserved.
37-42-321. Revocation of operator's certificate — disciplinary action by department.
37-42-322. Violation.

Chapter Cross-References

Metropolitan sanitary and/or storm sewer districts, Title 7, ch. 13, part 1.

Municipal sewage and/or water systems, Title 7, ch. 13, part 43.

Water quality, Title 75, ch. 5.

Public water supplies, distribution, and treatment, Title 75, ch. 6.

Aquatic ecosystem protections, Title 75, ch. 7.

Sanitation in subdivisions, Title 76, ch. 4, part 1.

Part 1

General

37-42-101. Purpose. It is declared that the health and welfare of Montana citizens are jeopardized by persons not properly qualified to operate the water supply systems and that Montana's state waters are endangered by persons not properly qualified to operate the wastewater treatment plants. It is declared that the public policy of this state is to protect the public health and safety by certifying persons working in these occupations.

History: En. Sec. 1, Ch. 239, L. 1967; R.C.M. 1947, 69-5901; amd. Sec. 1, Ch. 488, L. 1995.

37-42-102. Definitions. Unless the context requires otherwise, in this chapter, the following definitions apply:

(1) "Certificate" means a certificate of competency issued by the department, stating that the operator holding the certificate has met the requirements for the specified operator classification of the certification program.

(2) "Community water system" means the term as defined in 75-6-102.

(3) "Council" means the water and wastewater operators' advisory council provided for in 2-15-2105.

(4) "Department" means the department of environmental quality provided for in 2-15-3501.

(5) "Nontransient noncommunity water system" means a public water system, as defined in 75-6-202, that is not a community system and that regularly serves at least 25 of the same persons for at least 6 months a year.

(6) "Operator" means the person in direct responsible charge of the operation of a water treatment plant, water distribution system, or wastewater treatment plant.

(7) "State waters" means the term as defined in 75-6-102.

(8) "Wastewater treatment plant" means a facility that:

(a) is designed to remove solids, bacteria, or other harmful constituents of sewage, industrial wastes, or other wastes;

(b) discharges an effluent directly into state waters; and

(c) is part of either an industrial waste discharge system or a public sewage system as defined in 75-6-102.

(9) "Water distribution system" means that portion of the water supply system that conveys water from the water treatment plant or other supply source to the premises of the consumer and that is part of a community water system or a nontransient noncommunity water system.

(10) "Water supply system" means a system of pipes, structures, and facilities through which water is obtained, treated, sold, distributed, or otherwise offered to the public for household use or use by humans and that is part of a community water system or a nontransient noncommunity water system.

(11) "Water treatment plant" means that portion of the water supply system that alters either the physical, chemical, or bacteriological quality of the water and renders it safe and palatable for human use.

History: En. Sec. 2, Ch. 239, L. 1967; amd. Sec. 85, Ch. 349, L. 1974; R.C.M. 1947, 69-5902(part); amd. Sec. 4, Ch. 243, L. 1983; amd. Sec. 71, Ch. 418, L. 1995; amd. Sec. 2, Ch. 488, L. 1995; amd. Sec. 1, Ch. 538, L. 1997.

37-42-103. Exemption. Operators of plants or systems that do not serve 15 or more service connections or 25 or more people for at least 60 days of the calendar year are exempt from this chapter.

History: En. Sec. 2, Ch. 239, L. 1967; amd. Sec. 85, Ch. 349, L. 1974; R.C.M. 1947, 69-5902(part); amd. Sec. 1, Ch. 195, L. 1999.

Compiler's Comments

1999 Amendment: Chapter 195 after "systems" substituted "that do not serve 15 or more service connections or 25 or more people for at least 60 days of the calendar year" for "serving less than 10 families". Amendment effective March 26, 1999.

37-42-104. Classification of treatment plants and distribution systems. The department shall classify all water treatment plants, water distribution systems, and wastewater treatment plants with due regard to the size, type, physical conditions affecting such water treatment plants and distribution systems, character of wastewaters to be treated and other physical conditions affecting such waste treatment plants, and according to the skill, knowledge, and experience that the operator in responsible charge must have to successfully supervise the operation of such water treatment plants and water distribution systems and such wastewater treatment facilities so as to protect the public health and prevent unlawful pollution.

History: **En. Sec. 4, Ch. 239, L. 1967; amd. Sec. 111, Ch. 349, L. 1974; R.C.M. 1947, 69-5904.**

Part 2
Water and Wastewater Operators' Advisory Council

37-42-201. Meetings — compensation of members — expenses. (1) Annually, when new members are appointed to the council, a chairman shall be elected at the next council meeting.

(2) Meetings may be called by the chairman or on written request of four members of the council when necessary to carry out its function to advise the department under this chapter. Four members constitute a quorum.

(3) Members of the council are entitled to be reimbursed and compensated as are members of advisory councils in 2-15-122(5).

History: **En. Sec. 3, Ch. 239, L. 1967; amd. Sec. 1, Ch. 306, L. 1971; amd. Sec. 86, Ch. 349, L. 1974; amd. Sec. 46, Ch. 439, L. 1975; R.C.M. 1947, 69-5903(2), (3); amd. Sec. 5, Ch. 243, L. 1983.**

Cross-References

Right to know, Art. II, sec. 9, Mont. Const.
Open meetings, Title 2, ch. 3, part 2.
Meeting defined, 2-3-202.
Disrupting meeting as disorderly conduct, 45-8-101.

37-42-202. Rulemaking power — examinations — continuing education requirements. (1) The department shall adopt rules necessary to carry out this chapter. The rules shall include but are not limited to provisions establishing the basis for classification of treatment plants under 37-42-104, provisions establishing qualifications of applicants, procedures for examination of candidates, and other provisions necessary for the administration of this chapter.

(2) The department shall hold at least one examination each year, at a time and place designated by the department, for the purpose of examining candidates for certification.

(3) The department may establish reasonable continuing education requirements for certified water and wastewater operators.

History: **En. Sec. 10, Ch. 239, L. 1967; amd. Sec. 3, Ch. 306, L. 1971; amd. Sec. 91, Ch. 349, L. 1974; R.C.M. 1947, 69-5910; amd. Sec. 6, Ch. 243, L. 1983.**

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

37-42-203. Duty to advise and assist department. The council shall advise and assist the department in the administration of the certification program. The council shall serve as an advisory board to the department in actions relating to the qualifications of water and wastewater treatment plant operators.

History: **En. Sec. 3, Ch. 239, L. 1967; amd. Sec. 1, Ch. 306, L. 1971; amd. Sec. 86, Ch. 349, L. 1974; amd. Sec. 46, Ch. 439, L. 1975; R.C.M. 1947, 69-5903(1); amd. Sec. 7, Ch. 243, L. 1983.**

Cross-References

Public water supplies — actions to enforce compliance, 75-6-111.

Part 3

Licensing

Part Cross-References

Contested case as including licensing, 2-4-102.

Contested case procedure, Title 2, ch. 4, part 6.

Licensing to follow contested case procedure, 2-4-631.

Suspension of license fees for persons in military service, 10-1-605.

Unfair trade practices and consumer protection, Title 30, ch. 14.

Grounds for disciplinary action as grounds for license denial — conditions to new licenses, 37-1-137.

Licensure of criminal offenders, Title 37, ch. 1, part 2.

Nondiscrimination in licensing, 49-3-204.

37-42-301. Department to certify operators. (1) The department shall certify persons as to their qualifications to supervise successfully the operation of such water and wastewater treatment plants and water distribution systems.

(2) In granting the certificates, the department shall give due regard to the interest of this state in protecting the drinking water supplies and the quality of its water.

History: **(1)En. Sec. 5, Ch. 239, L. 1967; amd. Sec. 111, Ch. 349, L. 1974; Sec. 69-5905, R.C.M. 1947; (2)En. Sec. 8, Ch. 239, L. 1967; amd. Sec. 2, Ch. 306, L. 1971; amd. Sec. 89, Ch. 349, L. 1974; Sec. 69-5908, R.C.M. 1947; R.C.M. 1947, 69-5905, 69-5908(part); amd. Sec. 8, Ch. 243, L. 1983.**

37-42-302. Unlawful to operate plant or system without certified operator — department to issue temporary certificates — exception. (1) Except as provided in subsection (3), it is unlawful for a person, firm, or corporation, both municipal and private, operating a wastewater treatment plant, water treatment plant, or water distribution system to operate the plant or system unless the competency of the operator is certified to by the department under this chapter.

(2) Except as provided in subsection (3), it is unlawful for a person to perform the duties of an operator without being certified under this chapter.

(3) The prohibitions in subsections (1) and (2) do not pertain to a water distribution system that:

(a) does not contain a treatment facility;

(b) obtains all of its water from a public water supply system but is not owned or operated by the owner or operator of that public water supply system; and

(c) does not sell water.

(4) For good cause shown, the department may issue temporary certificates that are valid for up to 1 year.

History: **En. Sec. 11, Ch. 239, L. 1967; amd. Sec. 92, Ch. 349, L. 1974; R.C.M. 1947, 69-5911; amd. Sec. 9, Ch. 243, L. 1983; amd. Sec. 2, Ch. 195, L. 1999.**

Compiler's Comments

1999 Amendment: Chapter 195 at beginning of (1) and (2) inserted exception clause; inserted (3) exempting certain water distribution systems from requirement to use certified operator; and made minor changes in style. Amendment effective March 26, 1999.

37-42-303. Operator of treatment plant or distribution system to be certified — exemption. (1) Water and wastewater treatment plants and water distribution systems, whether publicly or privately owned, must be under the supervision of an operator whose competency is certified to by the department in a grade corresponding to the classification of that portion of the water or wastewater supply system to be supervised.

(2) However, this chapter does not prevent a governmental agency, corporation, or individual from continuing to employ in this capacity a person in responsible charge of the operation of such works on July 1, 1967. Certificates of proper classification may be issued without examination to the person or persons certified by the governing board or owner to have been in responsible charge of the water and wastewater plants and water distribution systems on July 1, 1967. A certificate so issued will be valid only in that plant.

History: En. Sec. 6, Ch. 239, L. 1967; amd. Sec. 87, Ch. 349, L. 1974; R.C.M. 1947, 69-5906(part).

37-42-304. Application for operator's certificate — fee. A person desiring to engage in the operation of a water treatment plant, water distribution system, or wastewater treatment plant shall first file an application with the department for a proper certificate. The department shall charge a fee of the same amount as the license cost as established pursuant to 37-1-134, except that the department shall reduce the fee by the amount that the cost of processing the application is offset by federal funds received. The department may not act on an application until the fee has been paid.

History: En. Sec. 8, Ch. 239, L. 1967; amd. Sec. 2, Ch. 306, L. 1971; amd. Sec. 89, Ch. 349, L. 1974; R.C.M. 1947, 69-5908(part); amd. Sec. 10, Ch. 243, L. 1983; amd. Sec. 3, Ch. 195, L. 1999.

Compiler's Comments

1999 Amendment: Chapter 195 at end of second sentence inserted exception clause requiring department to reduce fee by amount that the cost of processing the application is offset by federal funds; and made minor changes in style. Amendment effective March 26, 1999.

37-42-305. Certification without examination. The department may consider for certification the holder of a certificate issued by a governmental agency or equivalent certification board of another state on presentation to the department of satisfactory evidence that the applicant is in responsible charge of works located in this state requiring a certified operator and that he has successfully passed an examination at least equivalent to that required under 37-42-202(2).

History: En. Sec. 6, Ch. 239, L. 1967; amd. Sec. 87, Ch. 349, L. 1974; R.C.M. 1947, 69-5906(part); amd. Sec. 11, Ch. 243, L. 1983; amd. Sec. 92, Ch. 370, L. 1987.

Cross-References

Recognition of out-of-state licenses during disaster or emergency, 10-3-204.

37-42-306. Issuance of operator certificate — display. (1) The department shall issue certificates attesting to the competency of operators.

The certificates shall include the classification of the works which the operator is qualified to supervise.

(2) The certificate shall be prominently displayed in the office of the operator.

(3) Certificates continue in effect unless revoked by the department but remain the property of the department, and the certificate shall so state. A certificate shall be renewed annually by payment of the proper fee.

History: En. Sec. 7, Ch. 239, L. 1967; amd. Sec. 88, Ch. 349, L. 1974; R.C.M. 1947, 69-5907(part).

37-42-307. Retention of certificate by operators who terminate employment — notification to department. (1) Operators who terminate employment may retain their certificate for 2 years, provided that all other requirements are met. After 2 years, a certificate is automatically invalidated. Operators whose certificates are invalidated under this chapter may be issued new certificates of like classification, provided appropriate proof of competency is presented to the department. Successful completion of an examination may be required at the discretion of the department.

(2) Any person, firm, or corporation, both municipal and private, shall notify the department within 3 business days after termination if a certified water or wastewater operator terminates employment.

History: En. Sec. 7, Ch. 239, L. 1967; amd. Sec. 88, Ch. 349, L. 1974; R.C.M. 1947, 69-5907(3); amd. Sec. 12, Ch. 243, L. 1983.

37-42-308. Annual renewal — fees — revocation for failure to renew — reinstatement — notice of suspension. (1) Certificates issued under this chapter must be renewed annually before July 1. A certificate issued after July 1 expires the following June 30. After the payment of the initial fee under 37-42-304, a certificate holder shall pay before July 1 of each certificate year a renewal fee according to the schedule adopted by the department pursuant to 37-1-134, except that the department shall reduce the fee by the amount that the cost of administering the certificate is offset by federal funds received to fund the administration of the program.

(2) If a certificate holder does not apply for a renewal of the certificate before July 1 and remit to the department the necessary renewal fee, the department shall suspend the certificate. The department shall revoke any certificate that remains suspended for a period of more than 30 days. However, the department, before this revocation, shall notify the certificate holder by certified mail at the address on the issued certificate of its intention to revoke, at least 10 days before the time set for action to be taken by the department on the certificate.

(3) A certificate once revoked may not be reinstated unless it appears that an injustice has occurred through error or omission or other fact or circumstances indicating to the department that the certificate holder was not guilty of negligence or laches.

(4) Notice of suspension must be given to the certificate holder when the suspension occurs and to the proper official or owner of the treatment works or distribution system.

(5) If a person whose certificate has been revoked through the person's own fault desires to continue as a water or wastewater plant operator, the person shall make application to the department under 37-42-304. Successful

completion of an examination may be required at the discretion of the department.

History: **En. Sec. 9, Ch. 239, L. 1967; amd. Sec. 90, Ch. 349, L. 1974; R.C.M. 1947, 69-5909; amd. Sec. 13, Ch. 243, L. 1983; amd. Sec. 4, Ch. 195, L. 1999.**

Compiler's Comments

1999 Amendment: Chapter 195 at end of third sentence in (1) inserted exception clause requiring department to reduce fee by amount that the cost of administering the certificate is offset by federal funds; and made minor changes in style. Amendment effective March 26, 1999.

37-42-309. Deposit of fees. Filing and certification fees shall be deposited with the state treasurer in the department state special revenue fund and shall be used to pay the expenses of the council and department under this chapter. Moneys may be invested in accordance with procedures of investment of state moneys.

History: **En. Sec. 8, Ch. 239, L. 1967; amd. Sec. 2, Ch. 306, L. 1971; amd. Sec. 89, Ch. 349, L. 1974; R.C.M. 1947, 69-5908(part); amd. Sec. 14, Ch. 243, L. 1983; amd. Sec. 1, Ch. 277, L. 1983.**

37-42-310 through 37-42-320 reserved.

37-42-321. Revocation of operator's certificate — disciplinary action by department. (1) The department may revoke the certificate of an operator, following a hearing by the department, when it is found that:

(a) the operator has practiced fraud or deception;

(b) reasonable care, judgment, or the application of his knowledge or ability was not used in the performance of his duties; or

(c) the operator is incompetent or unable to properly perform his duties.

(2) The department may take any disciplinary action pursuant to 37-1-136.

History: **En. Sec. 7, Ch. 239, L. 1967; amd. Sec. 88, Ch. 349, L. 1974; R.C.M. 1947, 69-5907(2); amd. Sec. 15, Ch. 243, L. 1983.**

37-42-322. Violation. Any person, firm, or corporation, both municipal and private, violating any provisions of this chapter or the rules adopted hereunder is guilty of a misdemeanor. Each day of operation in violation of this chapter or any rules adopted hereunder shall constitute a separate offense.

History: **En. Sec. 12, Ch. 239, L. 1967; R.C.M. 1947, 69-5912.**

Cross-References

Criminal responsibility of corporations, 45-2-311.

Accountability for conduct of corporation, 45-2-312.

Penalty when none specified, 46-18-212.

CHAPTER 43

WATER WELL CONTRACTORS

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37-43-401. No action or counterclaim to be maintained except by licensee.
37-43-402. Completion of contracts by successor in interest of licensee.

Chapter Cross-References

Ground water, Title 85, ch. 2, part 5.

Part 1
General

37-43-101. Purpose. It is the purpose of this chapter to reduce and minimize the waste and contamination of ground water resources within this state by reasonable regulation and licensing of drillers or makers of water wells and monitoring wells and to protect the health and general welfare by providing a means for the development of the natural resource of underground water in an orderly, sanitary, and reasonable manner. The reasonable regulation and licensing of drillers or makers of water wells and monitoring wells is in the best interest of the public, and the waste and contamination of ground water resources through inefficient or incompetent operations of drillers or makers of water wells and monitoring wells is prohibited. For the protection of the public and for the conservation of underground water resources, it is necessary that standards be set and maintained to insure that competency in the drilling and making of water wells and monitoring wells in this state is obtained.

History: En. Sec. 2, Ch. 176, L. 1961; amd. Sec. 2, Ch. 234, L. 1963; amd. Sec. 2, Ch. 232, L. 1974; amd. Sec. 250, Ch. 350, L. 1974; R.C.M. 1947, 66-2602; amd. Sec. 1, Ch. 538, L. 1987.

37-43-102. Definitions. Unless the context requires otherwise, in this chapter the following definitions apply:

(1) "Apprentice water well driller" means an individual who is learning the trade of water well drilling and performs labor and services for a licensed

water well contractor and whose duties are directly related to well drilling or drilling rig operation.

(2) "Board" means the board of water well contractors provided for in 2-15-3307.

(3) "Department" means the department of natural resources and conservation provided for in Title 2, chapter 15, part 33.

(4) "Geotechnical boring" means a hole intended solely to determine the composition, stability, density, movement, pressure, stratigraphy, or other physical properties of soil or rock.

(5) "Monitoring well" means a well that is used for pollutant recovery or monitoring ground water quality, ground water levels, or flow direction, but whose primary purpose is not the withdrawal or acquisition of ground water. Monitoring well does not include geotechnical borings, perk test holes, and ground water exploration holes that are used to determine suitability of onsite sewage disposal by septic tank drain fields or lagoons.

(6) "Monitoring well constructor" means a natural person who installs monitoring wells.

(7) "Water well" means an excavation that is drilled, cored, bored, washed, driven, dug, jetted, or otherwise constructed and intended for the location, diversion, artificial recharge, or acquisition of ground water. The term does not include spring development or excavations, by backhoe or otherwise, for recovery and use of surface waters or for the purpose of stock watering or irrigation where the depth is 25 feet or less. The term does not include an excavation made for the purpose of obtaining or prospecting for oil, natural gas, minerals, or products of mining or quarrying or for inserting media to repressure oil- or natural-gas-bearing formations or for storing petroleum, natural gas, or other products.

(8) "Water well contractor" or "contractor" means a natural person who contracts on behalf of a firm, corporation, partnership, or other business entity to construct, alter, or rehabilitate a water well on lands other than his own for compensation.

(9) "Water well driller" or "driller" means any person, other than an apprentice, at a drilling site causing a water well to be drilled, altered, or rehabilitated.

History: En. 66-2602.1 by Sec. 251, Ch. 350, L. 1974; amd. Sec. 2, Ch. 232, L. 1974; amd. Sec. 1, Ch. 268, L. 1975; R.C.M. 1947, 66-2602.1(part); amd. Sec. 3, Ch. 274, L. 1981; amd. Sec. 1, Ch. 728, L. 1985; amd. Sec. 2, Ch. 538, L. 1987; amd. Sec. 1, Ch. 516, L. 1989.

37-43-103. Repealed. Sec. 10, Ch. 728, L. 1985.

History: En. 66-2602.2 by Sec. 252, Ch. 350, L. 1974; amd. Sec. 2, Ch. 232, L. 1974; R.C.M. 1947, 66-2602.2.

37-43-104. Licensed monitoring well constructor to supervise all construction of monitoring wells. (1) Any firm, corporation, or partnership may engage in the business of constructing or installing monitoring wells provided a licensed monitoring well constructor is in charge of all monitoring well installation.

(2) The licensed monitoring well constructor must be physically present at the site throughout the construction of the monitoring well.

History: En. Sec. 17, Ch. 538, L. 1987.

Part 2

Board of Water Well Contractors

Part Cross-References

Seal defined, 1-4-201.

Adoption and publication of rules, Title 2, ch. 4, part 3.

Allocation of boards for administrative purposes, 2-15-121.

Quasi-judicial boards, 2-15-124.

Board established, 2-15-3307.

Duties of Department, Director, and boards, Title 37, ch. 1, part 1.

37-43-201. Organization — seal — compensation of members. (1) The board shall annually elect a chairman and vice-chairman.

(2) The board shall have a seal with the words engraved thereon, "Board of Water Well Contractors", and such seal shall be affixed to all writs, authentication of records, and other official proceedings of the board. The courts of this state shall take judicial notice of such seal.

(3) Each appointed member of the board who is not a government employee shall receive as compensation for his services the sum of $50 per day for each day actually engaged in the performance of the duties of his office, including time of travel between his home and the places at which he shall perform such duties, together with mileage and per diem expenses as provided for in 2-18-501 through 2-18-503. The members who are employees of the state of Montana shall receive no extra compensation for their services as members of the board.

History: Ap. p. 82A-1602.26 by Sec. 3, Ch. 232, L. 1974; Sec. 361, Ch. 350, L. 1974; Sec. 82A-1602.26, R.C.M. 1947; Ap. p. Sec. 4, Ch. 176, L. 1961; amd. Sec. 152, Ch. 147, L. 1963; amd. Sec. 1, Ch. 278, L. 1969; amd. Sec. 25, Ch. 100, L. 1973; amd. Sec. 253, Ch. 350, L. 1974; amd. Sec. 41, Ch. 439, L. 1975; Sec. 66-2604, R.C.M. 1947; R.C.M. 1947, 66-2604, 82A-1602.26(4), (5); amd. Sec. 4, Ch. 83, L. 1981; amd. Sec. 3, Ch. 538, L. 1987.

37-43-202. Powers and duties. (1) The board may exercise the authority granted to it by this chapter.

(2) The board shall adopt rules and orders to effectuate this chapter.

(3) The board shall adopt rules to establish mandatory water well construction standards and enforcement procedures. The standards must address the protection of the drilling site; specifications for casing materials; materials and specifications for well screens; casing perforations; well development procedures; proper sealing and grouting; temporary capping; cleaning and disinfecting; bonds; guaranties; contractors' and drillers' qualifications; tests for yield and drawdown; reporting procedures and requirements for water quality, well logs, location of wells, and information relating to local conditions; well filters; access ports; gravel packing; sampling methods; plumbness and alignment of the hole and casing; well abandonment procedures; and other necessary and appropriate standards.

(4) The board shall adopt minimum standards regarding the construction, use, and abandonment of monitoring wells. The standards must be designed to protect the state's ground water resource from degradation by contamination and loss of hydrostatic pressure. A violation of the standards does not occur if it can be shown that noncompliance results in equal or greater protection of the ground water resource.

(5) The board may request the department to inspect water wells or monitoring wells drilled or being drilled, and the department has access to these wells at reasonable times.

(6) The board may establish a program for training apprentices and licensed or prospective water well contractors, water well drillers, and monitoring well constructors to more effectively carry out this chapter.

(7) The board shall set and enforce standards and rules governing the licensing, registration, and conduct of water well drillers, water well contractors, and monitoring well constructors.

(8) The board shall set fees commensurate with costs. The board may establish fees, including but not limited to fees for application, examination, renewal, reciprocity, late renewal, and continuing education. Board costs not related to specific programs may be equitably distributed as determined by the board. The board shall maintain records sufficient to support the fees charged for each program area.

(9) The rules of the board must be compiled in printed form for distribution to interested persons, for which the department may charge a fee. Sums realized from these sales must be deposited in the state special revenue fund for the use of the board.

(10) The board shall:

(a) authorize the department to issue licenses to qualified water well contractors, water well drillers, and monitoring well constructors in this state;

(b) cause examinations to be made of applicants for licenses;

(c) take disciplinary action and issue orders pursuant to this chapter; and

(d) generally perform duties that will carry out this chapter.

(11) The board shall pay to the department its share of the assessed costs of the department in administering this chapter.

History: En. Sec. 5, Ch. 176, L. 1961; amd. Sec. 153, Ch. 147, L. 1963; amd. Sec. 3, Ch. 234, L. 1963; amd. Sec. 254, Ch. 350, L. 1974; R.C.M. 1947, 66-2605; amd. Sec. 1, Ch. 277, L. 1983; amd. Sec. 2, Ch. 728, L. 1985; amd. Sec. 4, Ch. 538, L. 1987; amd. Sec. 3, Ch. 516, L. 1989; amd. Sec. 1, Ch. 284, L. 1993.

37-43-203. Renumbered 37-43-314 by Code Commissioner, 1993.

37-43-204. Earmarked money for board expenses — expenditure of funds from bonds. (1) All money collected under this chapter must be deposited in the state special revenue fund and may be used only for the purpose of paying expenses of the board. Except for funds received from bonds in subsection (2), the money must be appropriated by the legislature before it may be expended by the board. Income and interest from investment of the money in the state special revenue fund that are collected under this chapter must be credited to the board.

(2) The board may accept and expend all funds received from bonds required by 37-43-306. The funds must be used to remedy defects in water wells, to compensate for damages caused by violations of this chapter or the rules of the board, or to pay any administrative costs incurred by the board under 37-43-309, 37-43-310, and 37-43-313. These funds, other than those to pay any administrative costs, are statutorily appropriated as provided in 17-7-502.

History: En. Sec. 1, Ch. 493, L. 1991; amd. Sec. 6, Ch. 284, L. 1993; amd. Sec. 34, Ch. 422, L. 1997.

Part 3
Licensing

Part Cross-References

Licensing to follow contested case procedure, 2-4-631.

Suspension of license fees for persons in military service, 10-1-605.

Duty of Department to administer and grade examinations, 37-1-101.

Duty of Board to adopt and enforce licensing and certification rules, 37-1-131.

Licensing boards to establish fees commensurate with costs, 37-1-134.

Licensing investigation and review — record access, 37-1-135.

Grounds for disciplinary action as grounds for license denial — conditions to new licenses, 37-1-137.

Licensure of criminal offenders, Title 37, ch. 1, part 2.

Nondiscrimination in licensing, 49-3-204.

Application for permit, 85-2-302.

Exceptions to permit requirements — ground water, 85-2-306.

Controlled ground water areas — permits, 85-2-508.

37-43-301. Licensed person to supervise all construction. (1) Any firm, corporation, or partnership may engage in the business of constructing water wells provided a licensed water well contractor is placed in charge of all water well construction.

(2) The licensed water well contractor must be the individual who contracts on behalf of the firm, corporation, or partnership.

(3) A licensed water well driller, pursuant to 37-43-305, must be employed by a licensed water well contractor.

History: En. 66-2602.1 by Sec. 251, Ch. 350, L. 1974; amd. Sec. 2, Ch. 232, L. 1974; amd. Sec. 1, Ch. 268, L. 1975; R.C.M. 1947, 66-2602.1(part); amd. Sec. 6, Ch. 538, L. 1987.

37-43-302. License required. (1) The drilling, making, or construction of water wells and monitoring wells is declared to be a business and activity affecting the public interest, requiring reasonable standards of competence. Except as provided in subsection (2), it is unlawful for any water well contractor, water well driller, or monitoring well constructor as defined in this chapter to construct, alter, or rehabilitate a water well or a monitoring well without first having obtained a valid license therefor as provided for in this chapter. An individual who is licensed as a water well contractor is not required to have a separate water well driller's license to perform the actual construction work on the well or a separate license to install monitoring wells.

(2) A license is not required for:

(a) a person who drills, alters, or rehabilitates a water or monitoring well on land that is owned or leased by him, provided:

(i) the land is used by him for farming, ranching, or agricultural purposes or as his residence;

(ii) the person obtains a permit from the board; and

(iii) the construction of the well conforms to the minimum construction standards for water or monitoring wells set by board rule; or

(b) an apprentice water well driller who performs labor or services for a licensed water well contractor or driller in connection with the drilling of a water well at the direction and under the personal supervision of a licensed water well contractor or driller.

(3) (a) To obtain a permit under subsection (2)(a), a person shall file with the department an application containing the applicant's name, mailing address, the location of the proposed well, the nature of the applicant's

ownership interest in the property on which the well is to be located, the construction or installation method to be used, and the use for the proposed well.

(b) The board shall promptly issue a permit if it finds that:

(i) the well is located on land that the applicant owns or leases and that he uses for farming, ranching, or agricultural purposes or as his residence; and

(ii) the construction or installation method to be used meets the minimum standards for water wells or monitoring wells set by board rule.

History: En. Sec. 3, Ch. 176, L. 1961; R.C.M. 1947, 66-2603; amd. Sec. 19, Ch. 22, L. 1979; amd. Sec. 4, Ch. 728, L. 1985; amd. Sec. 7, Ch. 538, L. 1987; amd. Sec. 4, Ch. 516, L. 1989.

37-43-303. Application — fee. (1) Except as provided in 37-43-302(2), a person desiring to engage in the drilling, making, construction, alteration, or rehabilitation of one or more water or monitoring wells for underground water in this state shall first file an application with the department for a license. The application must set forth the applicant's qualifications, the equipment proposed to be used in the contracting, and other matters required by the board on forms adopted by the board.

(2) The department shall charge a fee prescribed by the board for filing an application. The application shall not be acted on until the fee has been paid. Fees collected under this section shall be deposited in the state special revenue fund for the use of the board.

(3) An appropriate license shall be issued to an applicant if, in the opinion of the board, the applicant is qualified to conduct water well or monitoring well construction operations. In the granting of licenses, the board shall have due regard for the interest of this state in the protection of its underground waters.

History: En. Sec. 6, Ch. 176, L. 1961; amd. Sec. 154, Ch. 147, L. 1963; amd. Sec. 4, Ch. 234, L. 1963; amd. Sec. 255, Ch. 350, L. 1974; R.C.M. 1947, 66-2606(1); amd. Sec. 1, Ch. 277, L. 1983; amd. Sec. 3, Ch. 642, L. 1983; amd. Sec. 5, Ch. 728, L. 1985; amd. Sec. 8, Ch. 538, L. 1987; amd. Sec. 9, Ch. 769, L. 1991.

37-43-304. Repealed. Sec. 18, Ch. 538, L. 1987.

History: En. Sec. 6, Ch. 176, L. 1961; amd. Sec. 154, Ch. 147, L. 1963; amd. Sec. 4, Ch. 234, L. 1963; amd. Sec. 255, Ch. 350, L. 1974; R.C.M. 1947, 66-2606(2); amd. Sec. 6, Ch. 728, L. 1985.

37-43-305. Examination and qualifications. (1) Under board rules pertaining to the business of drilling and contracting for drilling of water wells and monitoring wells, the department shall inquire by examination or otherwise into the qualifications of applicants for licenses. Examinations may be oral, written, or both.

(2) The qualifications for a water well contractor's license are:

(a) familiar knowledge of ground water laws of this state and sanitary standards for water well drilling and construction of water wells;

(b) knowledge of types of water well construction;

(c) knowledge of types of drilling tools and their uses;

(d) knowledge of geology in its relation to well construction;

(e) possession of adequate equipment by the applicant to complete satisfactory water wells under the standards of the board;

(f) financial responsibility of the applicant;

(g) successful completion of an examination given by the department; and

(h) completion of an apprenticeship of 1 year or more under the direct supervision of a licensed water well contractor or equivalent education, experience, or both, as determined by the board.

(3) The qualifications for a water well driller's license are:

(a) familiar knowledge of ground water laws of this state and sanitary standards for water well drilling and water well construction;

(b) knowledge of types of water well construction;

(c) knowledge of types of drilling tools and their uses;

(d) knowledge of geology in its relation to well construction;

(e) employment by a licensed water well contractor;

(f) completion of an apprenticeship of 1 year or more under the direct supervision of a licensed water well contractor or driller or equivalent education, experience or both, as determined by the board; and

(g) successful completion of an examination given by the department.

(4) The qualifications for a license to construct monitoring wells are:

(a) familiar knowledge of ground water laws of this state and sanitary standards for drilling and construction of monitoring wells;

(b) knowledge of types of monitoring well construction;

(c) knowledge of types of drilling tools used for monitoring wells and their uses;

(d) knowledge of geology;

(e) financial responsibility of the applicant;

(f) 1 or more years of experience in drilling monitoring wells under the direct supervision of a licensed monitoring well constructor or equivalent education, experience, or both, as determined by the board; and

(g) successful completion of an examination related specifically to drilling of monitoring wells given by the department.

(5) The department shall give examinations at times and places the board determines. Failure of an applicant to successfully complete the examination disqualifies him from making further application for a period of 3 months. The board shall act within a reasonable time on applications for licenses. An application shall be accompanied by the initial fee, and failure to successfully meet the requirements of the board does not entitle the applicant to a refund of the fee.

History: En. Sec. 8, Ch. 176, L. 1961; amd. Sec. 4, Ch. 232, L. 1974; amd. Sec. 257, Ch. 350, L. 1974; R.C.M. 1947, 66-2608; amd. Sec. 4, Ch. 642, L. 1983; amd. Sec. 7, Ch. 728, L. 1985; amd. Sec. 9, Ch. 538, L. 1987; amd. Sec. 5, Ch. 516, L. 1989.

37-43-306. Bond to be required. (1) The department, on issuance of a water well contractor's or monitoring well constructor's license under this chapter, shall require, before the person commences operations in this state, a good and sufficient surety bond or its equivalent in a certificate of deposit, cashier's check, bank draft, or certified check, to be approved by the board, in the sum of $4,000, conditioned that the licensee will comply with the rules of the board.

(2) A person who is licensed in more than one category need supply only one surety bond or its equivalent in a certificate of deposit, cashier's check, bank draft, or certified check, to be approved by the board, for $4,000.

(3) A state or federal employee who is bonded by the state or federal government is not required to supply a bond during the course of his

employment with the state or federal government. A bond is required if the person ceases government employment.

(4) In lieu of the requirements of subsections (1) through (3), a firm, corporation, or partnership having more than two licensed water well contractors or monitoring well constructors may submit one bond in the amount of $10,000 for the entire firm, corporation, or partnership."

History: En. Sec. 9, Ch. 176, L. 1961; amd. Sec. 5, Ch. 232, L. 1974; amd. Sec. 258, Ch. 350, L. 1974; amd. Sec. 2, Ch. 268, L. 1975; R.C.M. 1947, 66-2609; amd. Sec. 5, Ch. 642, L. 1983; amd. Sec. 8, Ch. 728, L. 1985; amd. Sec. 10, Ch. 538, L. 1987; amd. Sec. 6, Ch. 516, L. 1989.

37-43-307. Annual renewal — fee — revocation for nonrenewal. (1) The term for licenses issued under this chapter is from July 1 of each year through the following June 30. After the payment of the initial fee under 37-43-303, a licensee shall pay, before the first day of each license year, a renewal fee as prescribed by the board.

(2) If a licensee does not apply for renewal of his license before the first day of a license year and remit to the department the renewal fee, he shall have his license suspended by the board. If the license remains suspended for a period of more than 30 days after the first day of a license year, it shall be revoked by the board. However, the department, prior to this revocation, shall notify the licensee of the board's intention to revoke at least 10 days prior to the time set for action to be taken by the board on the license, by mailing notice to the licensee at the address appearing for the licensee in the records and files of the department. A license once revoked may not be reinstated unless it appears that an injustice has occurred indicating to the board that the licensee was not guilty of negligence or laches. If a person whose license has been revoked through his own fault desires to engage in the business of water well drilling or monitoring well construction in this state or contracting therefor, he must apply under 37-43-303. Notice of suspension shall be given a licensee when the suspension occurs.

History: En. Sec. 7, Ch. 176, L. 1961; amd. Sec. 256, Ch. 350, L. 1974; R.C.M. 1947, 66-2607; amd. Sec. 6, Ch. 642, L. 1983; amd. Sec. 11, Ch. 538, L. 1987; amd. Sec. 10, Ch. 769, L. 1991.

37-43-308. Reciprocity. If a person holding a license entitling him to drill water wells or monitoring wells in another state applies for a Montana water well contractor's, water well driller's, or monitoring well constructor's license, the board may waive the apprenticeship requirements and examination requirements if it finds that the standards and requirements of the state in which the applicant is licensed are equal to or exceed those of Montana. However, the board may require the applicant to successfully complete an examination based on Montana statutes and rules relating to the drilling of water wells or monitoring wells in this state.

History: En. Sec. 8, Ch. 642, L. 1983; amd. Sec. 12, Ch. 538, L. 1987; amd. Sec. 7, Ch. 516, L. 1989.

Cross-References

Recognition of out-of-state licenses during disaster or emergency, 10-3-204.

37-43-309. Complaints and investigations. The board may investigate complaints against licensees to determine compliance with the laws and rules of this chapter. Licensees must be given an opportunity to respond to complaints and demonstrate or achieve legal compliance prior to disciplinary action. The board may require complainants and licensees to appear before the board to discuss complaints and to attempt to settle differences.

History: En. Sec. 3, Ch. 284, L. 1993.

37-43-310. Disciplinary procedure. (1) If, after investigation and attempted settlement under 37-43-309, compliance with lawful requirements is not demonstrated or achieved, the board may initiate discipline by issuing a proposed disciplinary order. The proposed order must state the factual and legal basis for the order and identify the witnesses, documents, logs, and reports relied upon by the board in reaching a decision. Copies of any documents, logs, or reports must be attached to the proposed order.

(2) The board shall mail or deliver a copy of the proposed order to the licensee, along with notice that the licensee may request a hearing to show cause why the order should be rejected or modified. If a hearing is not requested within 20 days, the board shall adopt the proposed order as a final order.

(3) A request for hearing must be in writing and specify which, if any, board witnesses the licensee wishes to cross-examine. If a timely request for hearing is received, the board shall schedule a hearing before the board or assign a hearings examiner to conduct the hearing at a later date to be set by the hearings examiner. The board shall make the specified witnesses available for cross-examination at the hearing.

(4) The licensee has the burden to show cause why the proposed order should be rejected or modified. The licensee may cross-examine the board's witnesses, present evidence, propose alternative discipline, argue issues of law and fact, or otherwise attempt to convince the board that the proposed order should be rejected or modified.

(5) After considering the evidence, proposals, and arguments presented at the hearing, the board shall issue its final order adopting, rejecting, or modifying the proposed order. The final order must state the reason for the adoption, rejection, or modification of the proposed order.

(6) A final disciplinary order may be appealed to the district court in the first judicial district and is reviewable according to the rules and standards for judicial review of contested cases pursuant to the Montana Administrative Procedure Act.

History: En. Sec. 4, Ch. 284, L. 1993.

37-43-311. Repealed. Sec. 7, Ch. 284, L. 1993.

History: En. Sec. 10, Ch. 176, L. 1961; amd. Sec. 259, Ch. 350, L. 1974; R.C.M. 1947, 66-2610; amd. Sec. 7, Ch. 642, L. 1983.

37-43-312. Penalty. Any person who shall willfully violate any lawful rule or order of the board or who shall engage in the business of drilling, making, altering, or rehabilitating water wells or monitoring wells without first having obtained a license as in this chapter required or who shall violate any provision of this chapter shall be guilty of a misdemeanor and upon conviction shall be subject to a fine of not more than $500 or imprisonment in a county jail for a term not exceeding 6 months, or both. Any violation of this chapter shall be prosecuted by the county attorney in the county in which the violation occurred or is occurring, and the trial thereof shall be held in that county.

History: En. Sec. 13, Ch. 176, L. 1961; R.C.M. 1947, 66-2613; amd. Sec. 13, Ch. 538, L. 1987.

Cross-References

Prosecutorial duties of County Attorney, 7-4-2712.

Duties of County Attorney relating to state matters, 7-4-2716.

Criminal responsibility and accountability of corporations, 45-2-311, 45-2-312.

37-43-313. Disciplinary authority. (1) If the board finds grounds for disciplinary action, as provided in subsection (2), the board may by order:

(a) require a licensee to repair or reconstruct substandard wells at the licensee's expense to meet board standards;

(b) require a licensee to take further training or education;

(c) place probationary terms and conditions on a license;

(d) suspend a license for a period not to exceed 1 year; or

(e) revoke a license, specifying that the licensee may not reapply for licensure for a period of 3 years from the date of revocation.

(2) Grounds for disciplinary action include:

(a) violating the rules, construction standards, or laws established by the board and this chapter;

(b) disobeying an order from the board to repair or reconstruct a substandard well;

(c) violating probationary terms of or conditions on a license;

(d) misrepresenting facts on well log reports, license or renewal applications, or apprenticeship records or in response to board inquiries; or

(e) failing to maintain qualifications for licensure as specified in 37-43-305.

History: En. Sec. 5, Ch. 284, L. 1993.

37-43-314. Injunctions. The board may maintain an action to enjoin a person from engaging in the drilling, making, or construction of water wells or monitoring wells until a license to practice is procured. A person who has been enjoined and who violates the injunction is punishable for contempt of court.

History: En. Sec. 3, Ch. 728, L. 1985; amd. Sec. 5, Ch. 538, L. 1987; amd. Sec. 2, Ch. 284, L. 1993; Sec. 37-43-203, MCA 1991; redes. 37-43-314 by Code Commissioner, 1993.

Cross-References

Injunctions, Title 27, ch. 19.

Part 4
Miscellaneous Provisions

37-43-401. No action or counterclaim to be maintained except by licensee. No action or counterclaim shall be maintained by any water well contractor, water well driller, or monitoring well constructor in any court in this state with respect to any agreement, work, labor, or materials for which a license is required by this chapter or to recover the agreed price or any compensation under any such agreement or for any such work, labor, or materials for which a license is required by this chapter without alleging and proving that such water well contractor, water well driller, or monitoring well constructor had a valid license at the time of making such agreement and of supplying such labor, work, or materials.

History: En. Sec. 12, Ch. 176, L. 1961; R.C.M. 1947, 66-2612; amd. Sec. 14, Ch. 538, L. 1987.

Cross-References

Counterclaim and cross-claim, Rule 13, M.R.Civ.P. (see Title 25, ch. 20).

37-43-402. Completion of contracts by successor in interest of licensee. Upon the transfer by operation of law to the successor in interest of a licensed water well contractor's or monitoring well constructor's rights under a contract or agreement for the drilling, making, or construction of a water well or monitoring well, the successor in interest to such rights shall be permitted to engage in the business of drilling, making, or construction of water wells or monitoring wells to the extent necessary to perform the obligations of said licensee under such contract or agreement, provided that such engagement in business shall be under the supervision of a licensed water well contractor or monitoring well constructor.

History: En. Sec. 1, Ch. 234, L. 1963; R.C.M. 1947, 66-2615; amd. Sec. 15, Ch. 538, L. 1987.

CHAPTERS 44 THROUGH 46

RESERVED

CHAPTER 47

OUTFITTERS AND GUIDES

Part 1 — General

37-47-101. Definitions.
37-47-102. Repealed.

Part 2 — Board of Outfitters

37-47-201. Powers and duties of board relating to outfitters, guides, and professional guides.
37-47-202. Executive director — qualifications — powers and duties.

Part 3 — Licensing

37-47-301. License required — services performed — standards.
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37-47-313. Shuttle and rental services — exemption
37-47-314. Terminated.
37-47-315. Moratorium on issuance of hunting outfitter licenses.
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37-47-318. Fees in addition to annual license fee — allocation.

37-47-319 through 37-47-340 reserved.
37-47-341. Grounds for denial, suspension, or revocation of license.
37-47-342. Repealed.
37-47-343. Appeal procedure.
37-47-344. Penalties — disposition of fines.
37-47-345. Enforcement.
37-47-346. Repealed.
37-47-347 through 37-47-350 reserved.
37-47-351. Investigators — qualifications.

Part 4 — Relative Duties of Outfitters, Guides, and Participants

37-47-401. Purpose.
37-47-402. Duties of outfitters, guides, and professional guides.
37-47-403. Duties of participants.
37-47-404. Responsibility for violations of law.

Chapter Cross-References

Penalties cumulative, 87-1-102.

Part 1
General

37-47-101. Definitions. As used in this chapter, unless the context requires otherwise, the following definitions apply:

(1) "Accompany" means to go with or be together with a participant as an escort, companion, or other service provider, with an actual physical presence in the area where the activity is being conducted and within sight or sound of the participant at some time during the furnishing of service.

(2) "Base of operations" means the primary physical location where an outfitter receives mail and telephone calls, conducts regular daily business, and bases livestock, equipment, and staff during the hunting season.

(3) "Board" means the board of outfitters provided for in 2-15-1883.

(4) "Camp" means each individual facility or group of facilities that an outfitter uses to lodge a client for a client's trip or uses to lodge a client in the operating area designated in the outfitter's operations plan, including a motel, campground, bed and breakfast, lodge, tent camp, cabin, camper, trailer, or house.

(5) "Consideration" means something of value given or done in exchange for something of value given or done by another.

(6) "Department" means the department of commerce provided for in Title 2, chapter 15, part 18.

(7) "Guide" means a person who is employed by or who has contracted independently with a licensed outfitter and who accompanies a participant during outdoor recreational activities that are directly related to activities for which the outfitter is licensed.

(8) "License year" means that period beginning January 1 and ending December 31 of the same year.

(9) "Net client hunter use" or "NCHU" means the most actual clients served by an outfitter in any NCHU license category in any license year, as

documented by verifiable client logs or other documents maintained by the board pursuant to 37-47-201(7).

(10) "Nonresident" means a person other than a resident.

(11) "Outfitter" means any person, except a person providing services on real property that the person owns for the primary pursuit of bona fide agricultural interests, who for consideration provides any saddle or pack animal; facilities; camping equipment; vehicle, watercraft, or other conveyance; or personal service for any person to hunt, trap, capture, take, kill, or pursue any game, including fish, and who accompanies that person, either part or all of the way, on an expedition for any of these purposes or supervises a licensed guide or professional guide in accompanying that person.

(12) "Participant" means a person using the services offered by a licensed outfitter.

(13) "Professional guide" means a guide who has met experience, training, and testing qualifications for designation as a professional guide, as set by board rule.

(14) "Resident" means a person who qualifies for a resident Montana hunting or fishing license under 87-2-102.

History: Ap. p. Sec. 1, Ch. 221, L. 1971; amd. Sec. 37, Ch. 511, L. 1973; amd. Sec. 17, Ch. 9, L. 1977; Sec. 26-908, R.C.M. 1947; Ap. p. Sec. 69, Ch. 173, L. 1917; re-en. Sec. 3748, R.C.M. 1921; re-en. Sec. 3748, R.C.M. 1935; amd. Sec. 4, Ch. 173, L. 1949; amd. Sec. 3, Ch. 184, L. 1951; amd. Sec. 2, Ch. 223, L. 1955; amd. Sec. 1, Ch. 541, L. 1975; amd. Sec. 16, Ch. 9, L. 1977; Sec. 26-904, R.C.M. 1947; R.C.M. 1947, 26-904(1), 26-908; amd. Sec. 1, Ch. 170, L. 1981; amd. Sec. 2, Ch. 545, L. 1981; amd. Sec. 1, Ch. 410, L. 1983; amd. Sec. 2, Ch. 528, L. 1987; Sec. 87-4-101, MCA 1985; redes. 37-47-101 by Sec. 11, Ch. 528, L. 1987; amd. Sec. 1, Ch. 565, L. 1989; amd. Sec. 38, Ch. 16, L. 1991; amd. Sec. 1, Ch. 328, L. 1995; amd. Sec. 2, Ch. 543, L. 1999.

Compiler's Comments

1999 Amendment: Chapter 543 inserted definitions of base of operations, camp, and net client hunter use; and made minor changes in style. Amendment effective April 30, 1999.

Cross-References

Outfitter to perform all activities listed under definition or more restrictive special license, 37-47-308.

37-47-102. Repealed. Sec. 22, Ch. 328, L. 1995.

History: En. Sec. 69, Ch. 173, L. 1917; re-en. Sec. 3748, R.C.M. 1921; re-en. Sec. 3748, R.C.M. 1935; amd. Sec. 4, Ch. 173, L. 1949; amd. Sec. 3, Ch. 184, L. 1951; amd. Sec. 2, Ch. 223, L. 1955; amd. Sec. 1, Ch. 541, L. 1975; amd. Sec. 16, Ch. 9, L. 1977; R.C.M. 1947, 26-904(2); amd. Sec. 3, Ch. 545, L. 1981; amd. Sec. 3, Ch. 528, L. 1987; Sec. 87-4-102, MCA 1985; redes. 37-47-102 by Sec. 11, Ch. 528, L. 1987.

Part 2
Board of Outfitters

37-47-201. Powers and duties of board relating to outfitters, guides, and professional guides. The board shall:

(1) prepare and publish an information pamphlet that contains the names and addresses of all licensed outfitters. This pamphlet must be available for free distribution as early as possible during each calendar year but not later than the second Friday in March. The pamphlet must contain the names and addresses of only those outfitters who have a valid license for the current license year.

(2) cooperate with the federal government in matters of mutual concern regarding the business of outfitting and guiding in Montana;

(3) enforce the provisions of this chapter and rules adopted pursuant to this chapter;

(4) establish outfitter standards, guide standards, and professional guide standards;

(5) adopt:

(a) rules of procedure;

(b) rules to administer and enforce this chapter, including rules prescribing all requisite qualifications for licensure as an outfitter, guide, or professional guide. Qualifications for outfitters must include training, testing, experience in activities similar to the service to be provided, knowledge of rules of governmental bodies pertaining to outfitting and condition and type of gear and equipment, and the filing of an operations plan.

(c) any reasonable rules, not in conflict with this chapter, necessary for safeguarding the public health, safety, and welfare, including evidence of qualification and licensure under this chapter for any person practicing or offering to practice as an outfitter, guide, or professional guide;

(d) rules specifying standards for review and approval of proposed new operations plans involving hunting use or the proposed expansion of net client hunter use, as set forth in 37-47-316 and 37-47-317, under an outfitter's existing operations plan. Approval is not required when part or all of an existing operations plan is transferred from one licensed outfitter to another licensed outfitter. Rules adopted pursuant to this section must provide for solicitation and consideration of comments from hunters and sportspersons in the area to be affected by the proposal who do not make use of outfitter services.

(e) rules establishing outfitter reporting requirements. The reports must be filed annually and report actual leased acreage actively used by clients during that year and actual leased acres unused by clients during that year, plus any other information designated by the board and developed in collaboration with the department of fish, wildlife, and parks or the review committee established in 87-1-269 that is considered necessary to evaluate the effectiveness of the hunter management and hunting access management programs.

(6) hold hearings and proceedings to suspend or revoke licenses of outfitters, guides, and professional guides for due cause;

(7) maintain records of actual clients served by all Montana outfitters that fulfill the requirements of subsection (5)(e).

History: En. Sec. 4, Ch. 221, L. 1971; amd. Sec. 38, Ch. 511, L. 1973; amd. Sec. 13, Ch. 417, L. 1977; R.C.M. 1947, 26-911; amd. Sec. 1, Ch. 490, L. 1981; amd. Sec. 5, Ch. 545, L. 1981; amd. Sec. 1, Ch. 277, L. 1983; amd. Sec. 4, Ch. 528, L. 1987; Sec. 87-4-104, MCA 1985; redes. 37-47-201 by Sec. 11, Ch. 528, L. 1987; amd. Sec. 1, Ch. 220, L. 1993; amd. Sec. 3, Ch. 328, L. 1995; amd. Sec. 3, Ch. 543, L. 1999.

Compiler's Comments

1999 Amendment: Chapter 543 in (5)(d) after "client" substituted "hunter use, as set forth in 37-47-316 and 37-47-317" for "hunting use" and after "plan" deleted "in order to determine if the proposal will cause an undue conflict with existing hunting use of the area, constituting a threat to the public health, safety, or welfare. The board may not approve a new operations plan or the proposed expansion of net client hunting use under the existing operations plan if it finds that the proposal will cause an undue conflict with existing hunting use of the area"; inserted (5)(e) requiring board to adopt rules establishing outfitter reporting requirements and requiring annual reports on actual leased acreage used and unused by clients; and inserted (7) requiring board to maintain records of actual clients served by certain Montana outfitters. Amendment effective April 30, 1999.

37-47-202. Executive director — qualifications — powers and duties. (1) The department may hire an executive director to assist the board in carrying out its duties under this chapter.

(2) The executive director must:

(a) be a citizen of the United States and a resident of Montana;

(b) have knowledge of outfitting and guiding; and

(c) have at least 2 years' experience in management or equivalent training or education.

(3) The duties of the executive director include:

(a) processing and investigating applications for licensure as an outfitter or guide;

(b) conducting investigations of outfitters and guides that involve violations of this chapter or rules of the board and reporting to the board regarding complaints and investigations of complaints;

(c) coordinating inspections, investigations, and training activities of investigators under this chapter; and

(d) coordinating investigations with other local, state, and federal agencies.

History: En. Sec. 1, Ch. 183, L. 1993.

Part 3

Licensing

37-47-301. License required — services performed — standards. (1) A person may not act as an outfitter, guide, or professional guide or advertise or otherwise represent to the public that the person is an outfitter, guide, or professional guide without first securing a license in accordance with the provisions of this part.

(2) Whenever an outfitter is engaged by a participant, the outfitter shall keep and submit records as required by the board.

(3) Outfitters and guides, professional guides, and other employees of an outfitter may not shoot, kill, or take big game animals for or in competition with those employing them while acting as outfitters, guides, professional guides, or employees of an outfitter.

(4) Outfitters utilizing lands under the control of the United States government shall obtain the proper permits required by the government office responsible for the area in which the outfitter intends to operate and shall comply with environmental protection standards established for these lands.

(5) Outfitters may not willfully and substantially misrepresent their facilities, prices, equipment, services, or hunting or fishing opportunities.

(6) Outfitters and their employees, agents, and representatives shall take every reasonable measure to provide their advertised services to their clients.

(7) An outfitter may not hire or retain a guide or professional guide who does not hold a current license as provided under this part.

History: En. Sec. 7, Ch. 221, L. 1971; amd. Sec. 20, Ch. 9, L. 1977; amd. Sec. 13, Ch. 417, L. 1977; R.C.M. 1947, 26-914; amd. Sec. 8, Ch. 545, L. 1981; Sec. 87-4-121, MCA 1985; redes. 37-47-301 by Sec. 11, Ch. 528, L. 1987; amd. Sec. 2, Ch. 565, L. 1989; amd. Sec. 2, Ch. 220, L. 1993; amd. Sec. 4, Ch. 328, L. 1995.

37-47-302. Outfitter's qualifications. An applicant for an outfitter's license or renewal of a license must meet the following qualifications:

(1) be 18 years of age or older, be physically capable and mentally competent to perform the duties of an outfitter, and meet experience, training, and testing requirements as prescribed by board rule;

(2) own or hold under written lease or represent a company, corporation, or partnership who owns or holds under written lease the equipment and facilities that are necessary to provide the services advertised, contracted for, or agreed upon between the outfitter and the outfitter's clients (all equipment and facilities are subject to inspection at all reasonable times and places by the board or its designated agent);

(3) have demonstrated a respect for and compliance with the laws of any state or of the United States and all rules promulgated under those laws related to fish and game, conservation of natural resources, and preservation of the natural ecosystem without pollution of the ecosystem;

(4) have not, at any time, practiced fraud, deception, or material misrepresentation in procuring any previous outfitter's, guide's, professional guide's, or conservation license from the state of Montana;

(5) have not, at any time, promulgated any false or misleading advertising relating to the business of outfitting.

History: En. Sec. 8, Ch. 221, L. 1971; amd. Sec. 13, Ch. 94, L. 1973; amd. Sec. 3, Ch. 541, L. 1975; amd. Sec. 21, Ch. 9, L. 1977; amd. Sec. 13, Ch. 417, L. 1977; R.C.M. 1947, 26-915(3)(a) thru (3)(k); amd. Sec. 9, Ch. 545, L. 1981; amd. Sec. 8, Ch. 239, L. 1983; amd. Sec. 10, Ch. 528, L. 1987; Sec. 87-4-122, MCA 1985; redes. 37-47-302 by Sec. 11, Ch. 528, L. 1987; amd. Sec. 3, Ch. 220, L. 1993; amd. Sec. 5, Ch. 328, L. 1995.

37-47-303. Guide's and professional guide's qualifications. (1) An applicant for a guide's or professional guide's license must meet the following qualifications:

(a) be 18 years of age or older and be physically capable and mentally competent to perform the duties of a guide or professional guide;

(b) be endorsed and recommended by an outfitter with a valid license; and

(c) have been issued a valid wildlife conservation license.

(2) In addition to the requirements listed in subsection (1), an applicant for licensure as a professional guide must meet additional experience requirements, to be set by board rule, and may be required to show proof of training or pass a qualifying examination when required by board rule.

History: En. Sec. 8, Ch. 221, L. 1971; amd. Sec. 13, Ch. 94, L. 1973; amd. Sec. 3, Ch. 541, L. 1975; amd. Sec. 21, Ch. 9, L. 1977; amd. Sec. 13, Ch. 417, L. 1977; R.C.M. 1947, 26-915(4), (5); amd. Sec. 10, Ch. 545, L. 1981; Sec. 87-4-123, MCA 1985; redes. 37-47-303 by Sec. 11, Ch. 528, L. 1987; amd. Sec. 4, Ch. 220, L. 1993; amd. Sec. 6, Ch. 328, L. 1995.

37-47-304. Application. (1) Each applicant for an outfitter's, guide's, or professional guide's license shall make application for license on a form prescribed and furnished by the board.

(2) The application for an outfitter's license forms the basis for the outfitter's operations plan and must include:

(a) the applicant's full name, residence, address, conservation license number, driver's license number, birth date, physical description, and telephone number;

(b) the address of the applicant's principal place of business in the state of Montana;

(c) the amount and kind of property and equipment owned and used in the outfitting business of the applicant;

(d) the experience of the applicant, including years of experience as an outfitter, guide, or professional guide; the applicant's knowledge of areas in which the applicant has operated and intends to operate; and the applicant's ability to cope with weather conditions and terrain;

(e) a signed statement of the licensed outfitter for each guide and professional guide to be employed or retained as an independent contractor stating that the guide or professional guide is to be employed by the outfitter and stating that the outfitter recommends the guide or professional guide for licensure;

(f) an affidavit by the outfitter to the board that the equipment listed on the application is in fact owned or leased by the applicant, is in good operating condition, and is sufficient and satisfactory for the services advertised or contemplated to be performed by the applicant;

(g) a statement of the maximum number of participants to be accompanied at any one time;

(h) the written approval of the appropriate agency or landowner on whose lands the applicant will provide services or establish hunting camps; and

(i) the boundaries of the proposed operation, stating when applicable:

(i) the name and portion of river;

(ii) the county of location;

(iii) the legal owner of the property;

(iv) the name of the ranch;

(v) the proposed service, including the type of game sought;

(vi) the name of the agency granting use authority; and

(vii) other means of identifying boundaries as established by board rule.

(3) Applications for an outfitter's license must be in the name of an individual person only. Applications involving corporations, proprietorships, or partnerships must be made by one individual person who qualifies under the provisions of this part. A license issued pursuant to this part must be in the name of that person. The license must specifically state that the license is issued for the use and benefit of the named corporation, proprietorship, or partnership involved. Any revocation or suspension of a license is binding upon the individual person and the corporation, proprietorship, or partnership for the use and benefit of which the license was originally issued.

(4) Application must be made to and filed with the board.

(5) Only one application for an outfitter's license may be made in any license year. If an application is denied, subsequent applications by the same applicant for the license year involved are void, except as provided in 37-47-308.

History: En. Sec. 8, Ch. 221, L. 1971; amd. Sec. 13, Ch. 94, L. 1973; amd. Sec. 3, Ch. 541, L. 1975; amd. Sec. 21, Ch. 9, L. 1977; amd. Sec. 13, Ch. 417, L. 1977; R.C.M. 1947, 26-915(1), (2), (13); amd. Sec. 11, Ch. 545, L. 1981; amd. Sec. 10, Ch. 528, L. 1987; Sec. 87-4-124, MCA 1985; redes. 37-47-304 by Sec. 11, Ch. 528, L. 1987; amd. Sec. 3, Ch. 565, L. 1989; amd. Sec. 5, Ch. 220, L. 1993; amd. Sec. 7, Ch. 328, L. 1995.

37-47-305. Outfitter's examination. Each applicant for an outfitter's license, after meeting the experience and training specifications and other qualifications set by this chapter or rules adopted pursuant to this chapter, is entitled to take and must pass a standard examination administered by the board or its agent. The examination must require general and sufficient knowledge displaying and indicating ability to perform the services contemplated with efficiency and with safety to the health and welfare of participants. The examination must test the applicant's knowledge of subjects that apply to the type of license applied for and may include the following subjects:

(1) federal and state fish and game laws and regulations;
(2) practical woodsmanship;
(3) general knowledge of big game;
(4) field preparation of trophies;
(5) care of game meat;
(6) use of outfitter's gear as listed on the application;
(7) knowledge of area and terrain;
(8) knowledge of firearms;
(9) federal and state regulations as applicable to outfitting;
(10) first aid;
(11) boat safety;
(12) water safety;
(13) care and safety of livestock.

History: En. Sec. 8, Ch. 221, L. 1971; amd. Sec. 13, Ch. 94, L. 1973; amd. Sec. 3, Ch. 541, L. 1975; amd. Sec. 21, Ch. 9, L. 1977; amd. Sec. 13, Ch. 417, L. 1977; R.C.M. 1947, 26-915(3)(l); amd. Sec. 12, Ch. 545, L. 1981; amd. Sec. 10, Ch. 528, L. 1987; Sec. 87-4-125, MCA 1985; redes. 37-47-305 by Sec. 11, Ch. 528, L. 1987; amd. Sec. 6, Ch. 220, L. 1993; amd. Sec. 8, Ch. 328, L. 1995.

37-47-306. Fees. (1) The board shall establish fees commensurate with costs as provided in 37-1-134.

(2) Applications must be accompanied by a license fee as specified by board rule.

(3) If a nonresident license applicant resides in a state that requires residents of the state of Montana to pay in excess of the amount established by the board for a similar license, then the fee for the nonresident outfitter's, guide's, or professional guide's license must be the same amount as the higher fee charged in the state where the nonresident license applicant resides. A nonresident hunting outfitter is subject to the same rules and regulations that apply to a resident hunting outfitter.

(4) The license fees must be deposited in the state special revenue fund and must be used by the board to investigate the applicant, to enforce this part, and for administrative costs, subject to 37-1-101(6).

History: Ap. p. Sec. 8, Ch. 221, L. 1971; amd. Sec. 13, Ch. 94, L. 1973; amd. Sec. 3, Ch. 541, L. 1975; amd. Sec. 21, Ch. 9, L. 1977; amd. Sec. 13, Ch. 417, L. 1977; Sec. 26-915, R.C.M. 1947; Ap. p. Sec. 10, Ch. 221, L. 1971; amd. Sec. 23, Ch. 9, L. 1977; Sec. 26-917, R.C.M. 1947; R.C.M. 1947, 26-915(8) thru (11), 26-917; amd. Sec. 14, Ch. 545, L. 1981; amd. Sec. 4, Ch. 192, L. 1983; amd. Sec. 5, Ch. 528, L. 1987; Sec. 87-4-127, MCA 1985; redes. 37-47-306 by Sec. 11, Ch. 528, L. 1987; amd. Sec. 9, Ch. 328, L. 1995; amd. Sec. 4, Ch. 543, L. 1999.

Compiler's Comments

1999 Amendment: Chapter 543 in first sentence in (3) in two places substituted "nonresident license applicant" for "nonresident"; inserted second sentence concerning nonresident hunting outfitter subject to rules and regulations that apply to resident outfitter; and made minor changes in style. Amendment effective April 30, 1999.

37-47-307. Investigation of applicant — issuance or denial of license. (1) The department shall investigate each applicant for an outfitter's, guide's, or professional guide's license. The board shall determine the applicant's qualifications.

(2) The board may deny or refuse to issue any new license or to renew any previous license if the applicant does not meet the qualifications stated in this chapter or rules adopted pursuant to this chapter. In the event that any application for license is denied or refused, the board shall immediately notify the applicant, setting forth in the notice the grounds upon which the denial or refusal is based.

(3) A licensee in good standing is entitled to a new license for the ensuing license year upon complying with the provisions of this chapter or rules adopted pursuant to this chapter and upon completing an application for license renewal on a form provided by the board.

History: En. Sec. 8, Ch. 221, L. 1971; amd. Sec. 13, Ch. 94, L. 1973; amd. Sec. 3, Ch. 541, L. 1975; amd. Sec. 21, Ch. 9, L. 1977; amd. Sec. 13, Ch. 417, L. 1977; R.C.M. 1947, 26-915(12); amd. Sec. 15, Ch. 545, L. 1981; amd. Sec. 9, Ch. 239, L. 1983; amd. Sec. 6, Ch. 528, L. 1987; Sec. 87-4-128, MCA 1985; redes. 37-47-307 by Sec. 11, Ch. 528, L. 1987; amd. Sec. 7, Ch. 220, L. 1993; amd. Sec. 10, Ch. 328, L. 1995; amd. Sec. 100, Ch. 429, L. 1995.

37-47-308. Kinds of licenses. (1) When all the conditions of licensure have been satisfied, the board shall issue a license stating the outfitter or guide functions that the applicant is qualified and approved to perform.

(2) The license must be in the form prescribed and is valid for the licensing year in which issued.

(3) If the application is denied, the board shall notify the applicant in writing of the reasons for the denial, and if the reasons are corrected, a license must be issued upon reapplication.

History: En. Sec. 9, Ch. 221, L. 1971; amd. Sec. 4, Ch. 541, L. 1975; amd. Sec. 22, Ch. 9, L. 1977; R.C.M. 1947, 26-916(1); amd. Sec. 10, Ch. 528, L. 1987; Sec. 87-4-129, MCA 1985; redes. 37-47-308 by Sec. 11, Ch. 528, L. 1987; amd. Sec. 8, Ch. 220, L. 1993.

Cross-References

Limit on application for outfitter's or guide's license, 37-47-304.

37-47-309. Repealed. Sec. 22, Ch. 328, L. 1995.

History: En. Sec. 9, Ch. 221, L. 1971; amd. Sec. 4, Ch. 541, L. 1975; amd. Sec. 22, Ch. 9, L. 1977; R.C.M. 1947, 26-916(2), (3); amd. Sec. 16, Ch. 545, L. 1981; Sec. 87-4-130, MCA 1985; redes. 37-47-309 by Sec. 11, Ch. 528, L. 1987; amd. Sec. 4, Ch. 565, L. 1989; amd. Sec. 9, Ch. 220, L. 1993.

37-47-310. Transfer or amendment of outfitter's license. (1) An outfitter's license may not be transferred during any license year.

(2) An individual person may, upon proper showing, have that person's outfitter's license amended to indicate that the license is being held for the use and benefit of a named proprietorship, partnership, or corporation.

(3) Subject to approval by the board, an immediate member of the family of a deceased licensed outfitter may continue to outfit for the deceased outfitter's unexpired license year or until the heirs or personal representative of the estate sells the outfitting business or obtains relicensure of the business.

History: En. Sec. 9, Ch. 221, L. 1971; amd. Sec. 4, Ch. 541, L. 1975; amd. Sec. 22, Ch. 9, L. 1977; R.C.M. 1947, 26-916(4); amd. Sec. 17, Ch. 545, L. 1981; amd. Sec. 10, Ch. 528, L. 1987; Sec. 87-4-131, MCA 1985; redes. 37-47-310 by Sec. 11, Ch. 528, L. 1987; amd. Sec. 10, Ch. 220, L. 1993.

37-47-311. Limit one license. No person may hold more than one outfitter's license either for his own benefit or for the use and benefit of a partnership or corporation, nor may the name of any partnership or corporation appear on more than one current outfitter's license.

History: En. Sec. 9, Ch. 221, L. 1971; amd. Sec. 4, Ch. 541, L. 1975; amd. Sec. 22, Ch. 9, L. 1977; R.C.M. 1947, 26-916(5); Sec. 87-4-132, MCA 1985; redes. 37-47-311 by Sec. 11, Ch. 528, L. 1987.

37-47-312. Expiration of license. Notwithstanding any other provision or law, a license shall expire on the last day of the license year for which it was issued.

History: En. Sec. 9, Ch. 221, L. 1971; amd. Sec. 4, Ch. 541, L. 1975; amd. Sec. 22, Ch. 9, L. 1977; R.C.M. 1947, 26-916(6); Sec. 87-4-133, MCA 1985; redes. 37-47-312 by Sec. 11, Ch. 528, L. 1987.

37-47-313. Shuttle and rental services — exemption. (1) Nothing in this chapter prohibits the furnishing of shuttle or rental services as long as those services do not include in-field assistance to a customer.

(2) In-field assistance includes but is not limited to:

(a) setting up a camp;

(b) field instruction for the activity to be conducted by the customer; or

(c) other services considered to be services of an outfitter, as defined in 37-47-101.

History: En. Sec. 2, Ch. 328, L. 1995.

37-47-314. Terminated. Sec. 26, Ch. 328, L. 1995.

History: En. Sec. 11, Ch. 328, L. 1995.

37-47-315. *(Temporary)* **Moratorium on issuance of hunting outfitter licenses.** The legislature finds it necessary to protect the hunting resource, public health, public safety, and public welfare. Therefore, the board shall establish and regulate a moratorium on the issuance of outfitter licenses for land-based hunting activities. An outfitter licensed on April 14, 1995, may receive a renewal license, if qualified, but the total number of land-based hunting outfitter licenses may not exceed 543. *(Terminates July 1, 2002—sec. 6, Ch. 544, L. 1999.)*

History: En. Sec. 11, Ch. 459, L. 1995; amd. Sec. 1, Ch. 544, L. 1999.

Compiler's Comments

1999 Amendment: Chapter 544 in third sentence after "licenses" deleted "issued after April 14, 1995" and after "exceed" substituted "543" for "the number in existence on April 14, 1995". Amendment effective April 29, 1999.

Extension of Termination Date: Section 6, Ch. 544, L. 1999, amended sec. 18, Ch. 459, L. 1995, by extending the termination date imposed by Ch. 459 to July 1, 2002.

37-47-316. Request for net client hunter use expansion — operation — transfer of NCHU upon transfer of operations plan. (1) An outfitter who wishes to expand NCHU shall present an expansion request to the board. A newly licensed outfitter shall establish NCHU in the same manner as a licensed outfitter who requests an NCHU expansion unless the newly licensed outfitter is purchasing the business of an existing outfitter. The board shall evaluate the request based on the criteria provided in 37-47-317.

(2) For any expansion of NCHU approved by the board after March 1, 1996, the outfitter has 3 years from the date of the expansion approval to establish the new NCHU. Upon expiration of the third year, the outfitter's

client base must be adjusted to reflect the highest number of clients actually served, up to but not exceeding the number of clients authorized by the NCHU expansion request.

(3) An outfitter may exceed the NCHU in any given year by the following percentages without formally requesting an NCHU expansion:

(a) 10% for an outfitter with 1 to 50 clients;

(b) 8% for an outfitter with 51 to 100 clients; and

(c) 2% for an outfitter with 101 to 300 clients.

(4) When an expansion of NCHU is approved, the outfitter who is granted the expansion shall operate within the limits of the NCHU. The flexibility to exceed NCHU in any given year, as outlined in subsection (3), does not apply to an outfitter who has been previously granted an NCHU expansion.

(5) The NCHU of an existing outfitting business transfers with the operations plan for that business unless the business has not been in operation for at least 3 years. Upon the expiration of 3 years, the client base must be adjusted to reflect the highest number of clients served in any category during the preceding 3 years, not to exceed the total authorized by the NCHU.

History: En. Sec. 5, Ch. 543, L. 1999.

Compiler's Comments

Effective Date: Section 9(2), Ch. 543, L. 1999, provided that this section is effective on passage and approval. Approved April 30, 1999.

37-47-317. Criteria for board evaluation of NCHU expansion request — public comments. (1) The criteria listed in subsection (2) must be applied by the board in evaluating and deciding whether to grant an NCHU expansion request. The criteria must be considered in light of the cumulative effect of the current expansion request and any previously approved expansion requests. The board may not approve an expansion request unless, by a preponderance of the evidence, a reasonable person would conclude that the criteria support an expansion request.

(2) An NCHU expansion request may not be granted if any of the following criteria are established:

(a) The request creates closure of a public right-of-way.

(b) The requestor has current license restrictions imposed by the board or is currently subject to a disciplinary action imposed by the board.

(c) The requestor has been convicted or pleaded guilty to a violation of Montana hunting or fishing statutes, rules, or regulations in the last 3 years.

(d) Any information in the request is inaccurate or untrue.

(e) The request does not cover adequate land to ensure the personal safety of hunters.

(f) Sufficient wildlife is not available to support the proposed number of hunters covered under the request.

(g) The proposed expansion would create or exacerbate a game damage situation.

(h) The proposed expansion would restrict the current efforts of the department of fish, wildlife, and parks to manage area wildlife through permits issued to public hunters.

(3) Failure by a requestor to provide all pertinent information and documentation will result in the expansion request being deferred without

action until the subsequent meeting of the board. If the requestor fails to provide the pertinent information and documentation before the subsequent board meeting, the request must be denied.

(4) Public comments concerning an NCHU expansion must be solicited and compiled by the department of fish, wildlife, and parks from affected recreationists and recreationist organizations, public land management agencies, affected landowners and landowner organizations, affected outfitters and outfitter organizations, and the general public. Public comment must be solicited through the issuance of press releases and by identification of proposed leased private land by its popular description. The department of fish, wildlife, and parks shall incorporate the public comments into the analysis of the expansion request required under subsection (5). In addition, the board shall consider the public comments separately from the department of fish, wildlife, and parks' analysis.

(5) In considering an NCHU expansion request, the board shall also consider any analysis and comments submitted by the department of fish, wildlife, and parks. Departmental analysis may include but is not limited to the following criteria:

(a) whether historic hunting data, such as the past occurrence of outfitting or public hunting, supports the request;

(b) whether negative impacts to the wildlife population will occur, given documented wildlife trends in the geographical region encompassed by the expansion request;

(c) whether public access or public hunting trends in the geographic region affected by the request will be negatively impacted;

(d) whether there have been past substantiated conflicts between the hunting public and outfitters or between individual outfitters and their clients in the local geographic region affected by the request;

(e) if the expansion will create a negative effect on wildlife habitat;

(f) if the expansion will have negative implications on hunting on public land, hunting access, or outfitting;

(g) whether analysis of existing data regarding wildlife, hunting access, or other relevant information supports the expansion request; and

(h) whether there will be impacts on previously available hunting access in the local geographic region affected by the request, such as impact on the block management program.

(6) The outfitter making the expansion request shall address the criteria outlined in subsection (5) to the best of the outfitter's knowledge. The analysis required in subsection (5) must be compiled using information supplied by the applicant, through public comment, and through any other available data.

(7) In making its final decision regarding an expansion request, the board shall respond in the decision notice to comments received by outlining the comment and delineating how, if at all, the comment was incorporated into the final decision. The board shall also consider whether:

(a) the expansion will open private or public lands to public hunting that did not previously exist;

(b) the request addresses existing game damage by opening new public equivalent hunting opportunities for both outfitters and the public; and

(c) the expansion would directly restrict public access to public lands.

(8) For the purposes of this section, "right-of-way" means dedicated roads, such as county roads or forest service roads, or rights-of-way with historical use that have been established as legal public rights-of-way.

History: En. Sec. 6, Ch. 543, L. 1999.

Compiler's Comments

Effective Date: Section 9(2), Ch. 543, L. 1999, provided that this section is effective on passage and approval. Approved April 30, 1999.

37-47-318. Fees in addition to annual license fee — allocation. (1) In addition to the fees required in 37-47-306 for an outfitter providing hunting services, the following fees apply:

(a) An outfitter shall pay an annual fee of $2 for each client served.

(b) An outfitter who is granted a net client hunter use expansion shall pay a fee of $500 for each new client added to that outfitter's operations plan.

(c) An outfitter who operates hunting camps in more than one department of fish, wildlife, and parks administrative region shall pay an annual fee of $5,000 for each camp that is located beyond a 100-mile radius of the outfitter's base of operations and that is in an administrative region other than the region containing the outfitter's base of operations. A fee is not required for the following:

(i) an outfitter's base of operations camp;

(ii) camps established before January 1, 1999;

(iii) camps established on public land when use is directly regulated by public land-use policies; or

(iv) camps on corporate timberlands where public access is not restricted.

(d) An outfitter who desires a net client hunter use expansion shall pay a nonrefundable fee of $2,000 for each expansion request.

(2) Fees collected pursuant to this section must be expended by the board, pursuant to the authority in 37-47-306, and by the department of fish, wildlife, and parks, pursuant to the authority in 87-1-601, and used to fund administrative costs related to implementation of this chapter. The fees collected must be allocated as follows:

(a) Revenue generated by the $2 fee imposed in subsection (1)(a) must be split equally between the board and the department of fish, wildlife, and parks.

(b) Revenue generated by the $500 fee imposed in subsection (1)(b) must be allocated between the board and the department of fish, wildlife, and parks in the following order:

(i) the amount necessary to cover the department's administrative expenses that exceed the revenue generated by subsection (2)(a); and

(ii) the remaining amount to be deposited in the state special revenue fund to the credit of the board.

(c) Revenue generated by the $5,000 fee imposed in subsection (1)(c) must be deposited in the state special revenue fund to the credit of the board.

(d) Revenue generated by the $2,000 fee imposed in subsection (1)(d) must be split equally between the board and the department of fish, wildlife, and parks.

History: En. Sec. 7, Ch. 543, L. 1999.

Compiler's Comments

Effective Date: Section 9(2), Ch. 543, L. 1999, provided that this section is effective on passage and approval. Approved April 30, 1999.

37-47-319 through 37-47-340 reserved.

37-47-341. Grounds for denial, suspension, or revocation of license. A license or right to apply for and hold a license issued under this part may be denied, suspended, or revoked or other disciplinary conditions may be applied upon any of the following grounds:

(1) having ceased to meet all of the qualifications for holding a license, as required under this chapter and rules adopted pursuant to this chapter;

(2) fraud or deception in procuring a license;

(3) fraudulent, untruthful, or misleading advertising;

(4) having pleaded guilty to or been adjudged by a court guilty of a felony, including a case in which the sentence is suspended or imposition of the sentence is deferred, unless civil rights have been restored pursuant to law. A person may not apply for or hold an outfitter's, guide's, or professional guide's license during any period of time in which a sentence for a felony has been deferred or suspended.

(5) one conviction or bond forfeiture as to a violation of the fish and game or outfitting laws or regulations of any state or the United States;

(6) a substantial breach of a contract with a participant provided that the breach is established as a matter of final judgment in a court of law;

(7) the willful employment of or contracting with an unlicensed guide or professional guide by an outfitter;

(8) negligence or misconduct while acting as an outfitter, guide, or professional guide that causes an accident or injury to the person or property of a participant;

(9) misconduct as defined by board rule; or

(10) any violation of this chapter or a rule adopted pursuant to this chapter.

History: En. Sec. 11, Ch. 221, L. 1971; amd. Sec. 5, Ch. 541, L. 1975; amd. Sec. 8, Ch. 417, L. 1977; R.C.M. 1947, 26-918; amd. Sec. 18, Ch. 545, L. 1981; Sec. 87-4-141, MCA 1985; redes. 37-47-341 by Sec. 11, Ch. 528, L. 1987; amd. Sec. 5, Ch. 565, L. 1989; amd. Sec. 11, Ch. 220, L. 1993; amd. Sec. 12, Ch. 328, L. 1995.

37-47-342. Repealed. Sec. 128, Ch. 429, L. 1995.

History: En. Sec. 12, Ch. 221, L. 1971; amd. Sec. 6, Ch. 541, L. 1975; amd. Sec. 9, Ch. 417, L. 1977; R.C.M. 1947, 26-919; amd. Sec. 19, Ch. 545, L. 1981; amd. Sec. 7, Ch. 528, L. 1987; Sec. 87-4-142, MCA 1985; redes. 37-47-342 by Sec. 11, Ch. 528, L. 1987.

37-47-343. Appeal procedure. A person who feels aggrieved by a final order of the board denying issuance of a license or suspending or revoking a license as an outfitter, guide, or professional guide may petition for judicial review as provided in Title 2, chapter 4, part 7.

History: En. Sec. 13, Ch. 221, L. 1971; amd. Sec. 7, Ch. 541, L. 1975; amd. Sec. 10, Ch. 417, L. 1977; R.C.M. 1947, 26-920; amd. Sec. 20, Ch. 545, L. 1981; amd. Sec. 10, Ch. 528, L. 1987; Sec. 87-4-143, MCA 1985; redes. 37-47-343 by Sec. 11, Ch. 528, L. 1987; amd. Sec. 12, Ch. 220, L. 1993; amd. Sec. 13, Ch. 328, L. 1995.

Cross-References

Judicial review of contested cases — Montana Administrative Procedure Act, Title 2, ch. 4, part 7.

37-47-344. Penalties — disposition of fines. (1) A person who violates any provision of this chapter or rule adopted under this chapter is guilty of a misdemeanor and is punishable by a fine not exceeding $500.

(2) A person who represents to the public that the person is an outfitter or who purposely engages in outfitting without a license as required by this chapter is guilty of a misdemeanor and is punishable by a fine of not less than $200 and not more than $1,000, up to 1 year in the county jail, or both. Each day of violation is a separate offense. In addition, the person must be assessed and pay to the board the amount of all costs incurred by the board in investigating and preparing the case for trial and all prosecution costs, including but not limited to witness, transportation, and per diem expenses.

(3) Fifty percent of all fines paid under this section must be deposited in the general fund of the county in which the conviction is obtained, and 50% must be deposited in the state special revenue fund for the use of the board in enforcing this chapter. All investigation, preparation, and trial costs paid under this section must be deposited in the state special revenue fund for the use of the board in enforcing the provisions of this chapter. The board may reimburse other agencies for costs reasonably incurred in the enforcement of this chapter.

(4) A person convicted of engaging in outfitting without a license shall reimburse the full amount of any fees received to the person to whom illegal outfitter services were provided.

History: En. Sec. 8, Ch. 528, L. 1987; amd. Sec. 13, Ch. 220, L. 1993.

37-47-345. Enforcement. Investigations and arrests for violations of this chapter or rules adopted pursuant to this chapter may be made by any peace officer; warden of the department of fish, wildlife, and parks; or federal agency enforcement personnel.

History: En. Sec. 9, Ch. 528, L. 1987; amd. Sec. 14, Ch. 328, L. 1995.

Cross-References

Enforcement powers of wardens, 87-1-506.

37-47-346. Repealed. Sec. 128, Ch. 429, L. 1995.

History: En. Sec. 14, Ch. 220, L. 1993.

37-47-347 through 37-47-350 reserved.

37-47-351. Investigators — qualifications. (1) The department may hire investigators to assist the board in investigations and inspections authorized by this chapter.

(2) To qualify as an investigator, a person must:

(a) be a citizen of the United States and be a Montana resident;

(b) have knowledge of outfitting and guiding through prior experience as a licensed outfitter, guide, or professional guide or as a regulator of the outfitting profession; and

(c) have not less than 2 years' experience as a licensed private investigator or as an investigator, detective, special agent, or peace officer of a city, county, or state or of a federal agency.

History: En. Sec. 20, Ch. 328, L. 1995.

Part 4

Relative Duties of Outfitters, Guides, and Participants

37-47-401. Purpose. It is recognized that some activities conducted by outfitters, guides, and professional guides within the scope of their authorized services are inherently hazardous to participants regardless of all feasible safety measures that may be taken. It is the purpose of this part to define those areas of responsibility and affirmative acts or omissions for which outfitters, guides, and professional guides are liable for loss, damage, or injury and those risks for which the participant expressly assumes or is considered to have voluntarily assumed the risk of loss or damage.

History: En. Sec. 2, Ch. 170, L. 1981; Sec. 87-4-161, MCA 1985; redes. 37-47-401 by Sec. 11, Ch. 528, L. 1987; amd. Sec. 15, Ch. 328, L. 1995.

37-47-402. Duties of outfitters, guides, and professional guides. An outfitter, guide, or professional guide offering professional services in this state shall:

(1) act as would a reasonably prudent member of the profession while engaging in providing the services authorized to be performed by a licensed member of the profession;

(2) comply with all standards adopted by board rule.

History: En. Sec. 3, Ch. 170, L. 1981; Sec. 87-4-162, MCA 1985; redes. 37-47-402 by Sec. 11, Ch. 528, L. 1987; amd. Sec. 15, Ch. 220, L. 1993; amd. Sec. 16, Ch. 328, L. 1995.

37-47-403. Duties of participants. (1) A participant shall:

(a) act as would a reasonably prudent person when engaging in the activities offered by a licensed outfitter, guide, or professional guide in this state;

(b) receive permission from the outfitter, guide, or professional guide prior to embarking on any self-initiated activity and inform the outfitter, guide, or professional guide of the participant's plans and intentions upon receiving permission to engage in the self-initiated activity.

(2) A participant may not:

(a) interfere with the running or operation of an outfitter's, guide's, or professional guide's activities when those activities conform to the standards of care set forth in 37-47-402;

(b) use the outfitter's, guide's, or professional guide's equipment, facilities, or services unless the participant has requested and received permission from the outfitter, guide, or professional guide;

(c) knowingly, purposely, or negligently engage in any type of conduct that contributes to or causes injury to the participant or any other person.

History: En. Sec. 4, Ch. 170, L. 1981; Sec. 87-4-163, MCA 1985; redes. 37-47-403 by Sec. 11, Ch. 528, L. 1987; amd. Sec. 17, Ch. 328, L. 1995.

37-47-404. Responsibility for violations of law. (1) A person accompanying a hunting or fishing party as an outfitter or guide, professional guide, or other employee of the outfitter is equally responsible with any person or party employing the person as an outfitter for any violation of fish and game laws unless the violation is reported to a peace officer by the outfitter, guide, professional guide, or employee and the outfitter, guide, professional guide, or employee was not an active participant. An outfitter or guide, professional guide, or other employee of an outfitter who willfully fails or refuses to report any violation of fish and game laws is liable to the penalties provided in this section. If any guide or professional guide violates the laws or applicable regulations relating to fish and game, outfitting, or guiding with actual or implied knowledge of an outfitter employing the guide or professional guide, the outfitter is legally responsible for the violation for all purposes under the laws or regulations if the outfitter fails to report the violation to the proper authority.

(2) An outfitter, guide, or professional guide shall report any violation or suspected violation of fish and game laws that the outfitter, guide, or professional guide knows or reasonably should have known has been committed by the employees, agents, representatives, clients, or participants in the outfitting or guiding activity. The violation or suspected violation must be reported to a peace officer at the earliest possible opportunity.

(3) A person may not hire or retain an outfitter unless the outfitter is currently licensed in accordance with the laws of the state of Montana. A person may not use the services of a guide or professional guide and a guide or professional guide may not offer services unless the services are obtained through an endorsing outfitter.

History: En. Sec. 71, Ch. 173, L. 1917; re-en. Sec. 3750, R.C.M. 1921; re-en. Sec. 3750, R.C.M. 1935; amd. Sec. 6, Ch. 173, L. 1949; amd. Sec. 5, Ch. 184, L. 1951; amd. Sec. 3, Ch. 223, L. 1955; amd. Sec. 2, Ch. 541, L. 1975; R.C.M. 1947, 26-906; amd. Sec. 4, Ch. 545, L. 1981; Sec. 87-4-103, MCA 1985; redes. 37-47-404 by Sec. 11, Ch. 528, L. 1987; amd. Sec. 16, Ch. 220, L. 1993; amd. Sec. 18, Ch. 328, L. 1995.

CHAPTERS 48 AND 49

RESERVED

CHAPTER 50

PUBLIC ACCOUNTANTS

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Licensed public accountant — exemption from regulation of escrow business, 32-7-103.

Professional service corporations, Title 35, ch. 4.

Part 1
General

37-50-101. Definitions. Unless the context requires otherwise, in this chapter the following definitions apply:

(1) "Board" means the board of public accountants provided for in 2-15-1866.

(2) "Department" means the department of commerce provided for in Title 2, chapter 15, part 18.

(3) "Practice of public accounting" means performing or offering to perform by a person certified under 37-50-302 or licensed under 37-50-303, for a client or potential client, one or more types of services involving the use of accounting or auditing skills, including:

(a) the issuance of reports or financial statements on which the public may rely;

(b) one or more types of management advisory or consulting services;

(c) the preparation of tax returns; or

(d) furnishing advice on tax matters.

History: En. 66-1807.1 by Sec. 160, Ch. 350, L. 1974; R.C.M. 1947, 66-1807.1; amd. Sec. 3, Ch. 274, L. 1981; amd. Sec. 2, Ch. 382, L. 1989.

37-50-102. Exemptions. Nothing contained in this chapter shall prohibit any person not a certified public accountant or licensed public accountant from serving as an employee of or an assistant to a certified public accountant or a licensed public accountant holding a permit to practice under 37-50-314 or a partnership or corporation composed of certified public accountants or licensed public accountants registered under this chapter or a foreign accountant registered under 37-50-313, provided that such employee or assistant shall not issue any accounting or financial statement over his name.

History: En. Sec. 27, Ch. 118, L. 1969; R.C.M. 1947, 66-1839; amd. Sec. 4, Ch. 684, L. 1979; amd. Sec. 1, Ch. 335, L. 1983.

Part 2

Board of Public Accountants

Part Cross-References

Right to know, Art. II, sec. 9, Mont. Const.

Seal defined, 1-4-201.

Adoption and publication of rules, Title 2, ch. 4, part 3.

Public records, Title 2, ch. 6.

Allocation of boards for administrative purposes, 2-15-121.

Quasi-judicial boards, 2-15-124.

Board established, 2-15-1865.

Entries in official books and records prima facie evidence, 26-1-605.

Entry made by officer or Board prima facie evidence, 26-1-606.

Requirement of authentication or identification, Rule 901, M.R.Ev. (see Title 26, ch. 10).

Self-authentication, Rule 902, M.R.Ev. (see Title 26, ch. 10).

Public records, Rule 1005, M.R.Ev. (see Title 26, ch. 10).

Duties of Department, Director, and boards, Title 37, ch. 1, part 1.

Duty of Board to adopt rules on conduct, 37-1-131.

37-50-201. Organization — general rulemaking power — quorum — seal — records. (1) The board shall elect annually a chairman and a secretary from its members.

(2) The board may adopt rules for the conduct of its affairs and the administration of this chapter.

(3) A quorum for the transaction of business consists of three members of the board.

(4) The board shall have a seal which shall be judicially noticed.

(5) The department shall keep records of the board's proceedings. In a proceeding in court, civil or criminal, arising out of or founded on this chapter, copies of these records certified as correct under the seal of the board are admissible in evidence as tending to prove the content of these records.

History: En. Sec. 3, Ch. 118, L. 1969; amd. Sec. 162, Ch. 350, L. 1974; amd. Sec. 35, Ch. 439, L. 1975; R.C.M. 1947, 66-1815(1) thru (5); amd. Sec. 5, Ch. 684, L. 1979; amd. Sec. 2, Ch. 335, L. 1983.

37-50-202. Compensation of members — expenses. Each member of the board is entitled to receive compensation and travel expenses as provided for in 37-1-133.

History: En. Sec. 3, Ch. 118, L. 1969; amd. Sec. 162, Ch. 350, L. 1974; amd. Sec. 35, Ch. 439, L. 1975; R.C.M. 1947, 66-1815(6); amd. Sec. 6, Ch. 684, L. 1979; amd. Sec. 28, Ch. 474, L. 1981.

37-50-203. Rules of the board. (1) The board may adopt rules, consistent with the purposes of this chapter, as it considers necessary.

(2) The board shall adopt:

(a) rules of professional conduct appropriate to establish and maintain a high standard of integrity, dignity, and competency in the profession of public accounting, including competency in specific fields of public accounting;

(b) rules of procedure governing the conduct of matters before the board;

(c) rules governing education requirements, as provided in 37-50-305, for issuance of the certificate of a certified public accountant and the license for licensed public accountant;

(d) rules governing partnerships and corporations practicing public accounting, including but not limited to rules concerning their style, name, title, and affiliation with any other organization and establishing reasonable standards with respect to professional liability insurance and unimpaired capital and prescribing joint and several liability for torts relating to professional services for shareholders of any corporation failing to comply with the standards;

(e) rules defining requirements for accounting experience, not exceeding 2 years, for issuance of the initial permit; and

(f) rules to enforce the provisions of this chapter. The purpose of the rules must be to provide for the monitoring of the profession of public accounting and to maintain the quality of the accounting profession.

History: En. Sec. 5, Ch. 118, L. 1969; amd. Sec. 164, Ch. 350, L. 1974; R.C.M. 1947, 66-1817; amd. Sec. 7, Ch. 684, L. 1979; amd. Sec. 3, Ch. 335, L. 1983; amd. Sec. 101, Ch. 429, L. 1995; amd. Sec. 42, Ch. 492, L. 1997.

37-50-204. Rulemaking powers relating to reexaminations. The board shall have power to prescribe by uniform rule for the following:

(1) the terms and conditions under which a candidate who passes one or more subjects of examination may be reexamined in only the remaining subjects, with credit for the subjects previously passed;

(2) a reasonable waiting period for a candidate's reexamination in a subject he has failed;

(3) the maximum number of reexaminations for which a candidate may apply;

(4) the fees to be charged each candidate for initial examinations and special examinations, which shall be commensurate with costs. With respect to reexaminations, a fee commensurate with costs may be charged for each subject in which the candidate is reexamined.

History: En. Sec. 14, Ch. 118, L. 1969; amd. Sec. 9, Ch. 533, L. 1977; R.C.M. 1947, 66-1826.

37-50-205. Duties of the department. The department shall:

(1) assist the board in transactions of its business and keep a record of the board's official action; and

(2) assess to the board the reasonable costs of the department incurred in assisting the board.

History: En. Sec. 21, Ch. 684, L. 1979.

Part 3
Licensing

Part Cross-References

Licensing to follow contested case procedure, 2-4-631.

Suspension of license fees for persons in military service, 10-1-605.

Duty of Department to administer and grade examinations, 37-1-101.

Duty of Board to adopt and enforce licensing and certification rules, 37-1-131.

Licensing investigation and review — record access, 37-1-135.

Grounds for disciplinary action as grounds for license denial — conditions to new licenses, 37-1-137.

Licensure of criminal offenders, Title 37, ch. 1, part 2.

Nondiscrimination in licensing, 49-3-204.

37-50-301. Illegal use of title. (1) No person may assume or use the title or designation "certified public accountant" or the abbreviation "CPA" or any other title, designation, words, letters, abbreviation, sign, card, or device tending to indicate that such person is a certified public accountant unless such person holds a current certificate as a certified public accountant under this chapter. However, a foreign accountant who has registered under the provisions of 37-50-313 may use the title under which he is generally known in his country, followed by the name of the country from which he received his certificate, license, or degree.

(2) No partnership or corporation shall assume or use the title or designation "certified public accountant" or the abbreviation "CPA" or any other title, designation, words, letters, abbreviation, sign, card, or device tending to indicate that such partnership or corporation is composed of certified public accountants unless it is registered under 37-50-331 or 37-50-332, whichever is applicable, and all of its offices in this state for the practice of public accounting are maintained and registered as required under 37-50-335.

(3) No person may assume or use the title or designation "licensed public accountant", "public accountant", or any other title, designation, words, letters, abbreviation, sign, card, or device tending to indicate that such person is a public accountant unless such person holds a current license as a licensed public accountant under this chapter.

(4) No partnership or corporation may assume or use the title or designation "licensed public accountant", "public accountant", or any other title, designation, words, letters, abbreviation, sign, card, or device tending to indicate that such partnership or corporation is composed of public accountants unless it is registered under 37-50-331, 37-50-332, 37-50-333, or 37-50-334, whichever is applicable, and all of its offices in this state for the practice of public accounting are maintained and registered as required under 37-50-335.

(5) No person, corporation, or partnership may assume or use the title or designation "certified accountant", "chartered accountant", "enrolled accountant", "licensed accountant", "registered accountant", or any other title or designation likely to be confused with "certified public accountant", "licensed public accountant", "public accountant" or any of the abbreviations "CA", "EA", "LA", or "RA" or similar abbreviations likely to be confused with "CPA". However, a foreign accountant who has registered under 37-50-313 may use the title under which he is generally known in his country, followed by the name of the country from which he received his certificate, license, or degree.

(6) No person may sign or affix his name or any trade or assumed name used by him in his profession or business with any wording indicating that he has expert knowledge in accounting or auditing to any accounting or financial statement or to any opinion on, report on, or certificate to any accounting or financial statement unless he holds a current permit issued under 37-50-314 and all of his offices in this state for the practice of public accounting are maintained and registered under 37-50-335. However, the provisions of this subsection do not prohibit any officer, employee, partner, or principal of any organization from affixing his signature to any statement or report in reference to the financial affairs of that organization with any wording designating the position, title, or office which he holds in that organization, nor do the

provisions of this subsection prohibit any act of a public official or public employee in the performance of his duties as such.

(7) No person may sign or affix a partnership or corporation name with any wording indicating that it is a partnership or corporation composed of persons having expert knowledge in accounting or auditing to any accounting or financial statement or to any report on or certificate to any accounting or financial statement unless the partnership or corporation is registered under 37-50-331, 37-50-332, 37-50-333, or 37-50-334 and all of its offices in this state for the practice of public accounting are maintained and registered as required under 37-50-335.

(8) No person may assume or use the title or designation "certified public accountant" or "public accountant" in conjunction with names indicating or implying that there is a partnership or corporation or in conjunction with the designation "and company" or "and co." or a similar designation if, in any such case, there is in fact no bona fide partnership or corporation registered under 37-50-331, 37-50-332, 37-50-333, or 37-50-334. However, it is lawful for a sole proprietor to continue the use of the deceased's name in connection with his business for a reasonable period of time after the death of a former partner.

History: En. Sec. 26, Ch. 118, L. 1969; amd. Sec. 5, Ch. 207, L. 1974; amd. Sec. 14, Ch. 101, L. 1977; R.C.M. 1947, 66-1838; amd. Sec. 8, Ch. 684, L. 1979; amd. Sec. 162, Ch. 575, L. 1981; amd. Sec. 4, Ch. 335, L. 1983.

37-50-302. Certified public accountants — certification — qualifications and requirements. The board shall grant an initial certificate as a certified public accountant to any person who:

(1) is of good moral character;

(2) has successfully passed the certified public accountants' examination; and

(3) meets the requirements of education set forth in this chapter and in board rules.

History: En. Sec. 7, Ch. 118, L. 1969; amd. Sec. 5, Ch. 168, L. 1971; amd. Sec. 166, Ch. 350, L. 1974; R.C.M. 1947, 66-1819; amd. Sec. 9, Ch. 684, L. 1979; amd. Sec. 5, Ch. 335, L. 1983.

37-50-303. Public accountants — licensure — qualifications and requirements. The board shall grant an initial license as a licensed public accountant to any person who:

(1) is of good moral character;

(2) meets the requirements of education set forth in this chapter and board rules; and

(3) complies with the qualifications and requirements in any one of the subsections of 37-50-304.

History: En. Sec. 8, Ch. 118, L. 1969; amd. Sec. 6, Ch. 168, L. 1971; amd. Sec. 167, Ch. 350, L. 1974; R.C.M. 1947, 66-1820; amd. Sec. 6, Ch. 341, L. 1981; amd. Sec. 163, Ch. 575, L. 1981; amd. Sec. 6, Ch. 335, L. 1983.

37-50-304. Public accountants — licensure without examination of former military personnel — examination otherwise required. (1) Persons serving in the armed forces of the United States on July 1, 1969, who immediately prior to entering this service held themselves out to the public as public accountants and who were engaged as principals in this state in the practice of public accounting as their principal occupation prior to service in the armed forces may register with the department within 6 months after the date of their separation from active service and, on registration and payment of the license fee, be issued a license by the department as a licensed public accountant. A principal is either the owner of or a partner in an existing accounting practice on July 1, 1969.

(2) In order to be issued a license as a licensed public accountant, a person who does not qualify under subsection (1) shall successfully complete those portions of the examination provided for in 37-50-308 prescribed by the board by rule. The board may require successful completion of alternate portions of the examination for applicants holding valid United States treasury cards at the time of taking the examination.

History: En. Sec. 9, Ch. 118, L. 1969; amd. Sec. 168, Ch. 350, L. 1974; R.C.M. 1947, 66-1821; amd. Sec. 1, Ch. 218, L. 1993.

37-50-305. Education requirements. (1) Prior to July 1, 1997, a candidate for certification as a certified public accountant or licensing as a licensed public accountant must have graduated from a college or university accredited to offer a baccalaureate degree:

(a) with a concentration in accounting; or

(b) with a concentration other than accounting if supplemented by experience or by related courses in other areas of business administration and the board determines that an equivalent education has been achieved.

(2) Beginning July 1, 1997, a candidate for certification as a certified public accountant or licensing as a licensed public accountant must have graduated from a college or university accredited to offer a baccalaureate degree:

(a) with an accounting concentration or its equivalent as determined by the board; and

(b) with at least 150 semester hours of credit, including those earned toward the baccalaureate degree or its equivalent.

History: En. Sec. 12, Ch. 118, L. 1969; R.C.M. 1947, 66-1824; amd. Sec. 10, Ch. 684, L. 1979; amd. Sec. 7, Ch. 335, L. 1983; amd. Sec. 3, Ch. 382, L. 1989.

37-50-306. Repealed. Sec. 26, Ch. 684, L. 1979.

History: En. Sec. 13, Ch. 118, L. 1969; amd. Sec. 169, Ch. 350, L. 1974; R.C.M. 1947, 66-1825(1), (2), (4), (5).

37-50-307. Repealed. Sec. 26, Ch. 684, L. 1979.

History: En. Sec. 18, Ch. 118, L. 1969; amd. Sec. 171, Ch. 350, L. 1974; R.C.M. 1947, 66-1830.

37-50-308. Examination. Except as provided in 37-1-101(4), the department shall administer an examination in accounting, auditing, and related subjects as the board determines appropriate. The grade determination of the board is final in each case. The board may use the examination and grading services of the American institute of certified public accountants or other third parties to perform examination administrative services. The examination must be held at least annually and at other times as applications warrant. The board may determine the time and place of examination and may adopt rules necessary for the orderly conduct of the examination.

History: En. Sec. 6, Ch. 118, L. 1969; amd. Sec. 165, Ch. 350, L. 1974; R.C.M. 1947, 66-1818; amd. Sec. 20, Ch. 22, L. 1979; amd. Sec. 11, Ch. 684, L. 1979; amd. Sec. 8, Ch. 335, L. 1983; amd. Sec. 21, Ch. 230, L. 1999.

Compiler's Comments

1999 Amendment: Chapter 230 at end of third sentence inserted "or other third parties to perform examination administrative services"; and made minor changes in style. Amendment effective October 1, 1999.

37-50-309. Credit for examinations taken in other states. The board may by rule provide for granting credit to a candidate for his satisfactory completion of a written examination in any one or more of the subjects of examination given by the licensing authority in another state. These rules shall include requirements the board determines appropriate in order that an examination approved as a basis for credit is, in the judgment of the board, at least as thorough as that included in the examination given in this state at the time the credit originally was granted by the other state for passing the examination.

History: En. Sec. 13, Ch. 118, L. 1969; amd. Sec. 169, Ch. 350, L. 1974; R.C.M. 1947, 66-1825(3); amd. Sec. 12, Ch. 684, L. 1979.

37-50-310. Existing certificates sufficient. Persons who, on July 1, 1969, held certified public accountant certificates heretofore issued under the laws of this state shall not be required to obtain additional certificates under this chapter but shall otherwise be subject to all provisions of this chapter. Such certificates heretofore issued shall, for all purposes, be considered certificates issued under this chapter and subject to the provisions hereof.

History: En. Sec. 15, Ch. 118, L. 1969; R.C.M. 1947, 66-1827(part).

37-50-311. Certified public accountants — waiver of examination for holders of foreign or out-of-state licenses, certificates, permits, or degrees. The board in its discretion may waive the examination and issue a certificate as a certified public accountant to any person otherwise eligible therefor who is the holder of a certificate, license, or permit as a certified public accountant, then in full force and effect, issued under the laws of any state or is the holder of a certificate, license, or degree in a foreign country constituting a recognized qualification for the practice of public accounting in such country, comparable to that of a certified public accountant in this state, which is then in full force and effect, where the requirements entitling him to practice as such certified public accountant were substantially equivalent to those in force in the state of Montana at the time the certificate was originally issued.

History: En. Sec. 15, Ch. 118, L. 1969; R.C.M. 1947, 66-1827(part); amd. Sec. 9, Ch. 335, L. 1983.

Cross-References

Recognition of out-of-state licenses during disaster or emergency, 10-3-204.

37-50-312. Public accountants — waiver of examination for holders of out-of-state license. The board in its discretion may waive the examination and register as a licensed public accountant any person otherwise eligible therefor who is the holder of a license as a licensed public accountant, then in full force and effect, issued under the laws of any state or is the holder of a license or degree in a foreign country constituting a recognized qualification for the practice of public accounting in such country, comparable to that of a licensed public accountant in this state, which is then in full force and effect, where the requirements entitling him to practice as such licensed public accountant were substantially equivalent to those in force in the state of Montana at the time the license was originally issued.

History: En. Sec. 15, Ch. 118, L. 1969; R.C.M. 1947, 66-1827(part); amd. Sec. 10, Ch. 335, L. 1983.

Cross-References

Recognition of out-of-state licenses during disaster or emergency, 10-3-204.

37-50-313. Registration of foreign accountants — restriction on title used. The board may in its discretion permit the registration of any person of good moral character who is the holder of a certificate, license, or degree in a foreign country constituting a recognized qualification for the practice of public accounting in such country. A person so registered shall use only the title under which he is generally known in his country, followed by the name of the country from which he received his certificate, license, or degree.

History: En. Sec. 16, Ch. 118, L. 1969; R.C.M. 1947, 66-1828.

37-50-314. Permit required — display. (1) A person may not engage in the practice of public accounting in this state without a current permit issued by the department. A permit to engage in the practice of public accounting in this state must be issued by the department to a person who holds a current certificate as a certified public accountant or license as a licensed public accountant and complies with the requirements of this chapter.

(2) The current permit to engage in the practice of public accounting must be prominently displayed for public inspection.

History: En. Sec. 21, Ch. 118, L. 1969; amd. Sec. 174, Ch. 350, L. 1974; R.C.M. 1947, 66-1833; amd. Sec. 13, Ch. 684, L. 1979; amd. Sec. 11, Ch. 335, L. 1983; amd. Sec. 102, Ch. 429, L. 1995; amd. Sec. 43, Ch. 492, L. 1997.

37-50-315. Deposit of moneys collected. Fees and other moneys collected by the department under this chapter shall be deposited in the state special revenue fund for the use of the board.

History: En. Sec. 4, Ch. 118, L. 1969; amd. Sec. 163, Ch. 350, L. 1974; R.C.M. 1947, 66-1816; amd. Sec. 14, Ch. 684, L. 1979; amd. Sec. 1, Ch. 277, L. 1983.

37-50-316. Other license fees prohibited. No certificate, permit, or license fees shall be imposed as a condition upon the practice of public accountancy other than those provided for in this chapter.

History: En. Sec. 30, Ch. 118, L. 1969; R.C.M. 1947, 66-1842; amd. Sec. 12, Ch. 335, L. 1983.

37-50-317. Certificate, license, and permit expiration — renewal fees. (1) Certificates, licenses, and permits issued by the board expire on the date set by department rule.

(2) Certificates and licenses must be renewed by the department upon payment of the periodic renewal fee set by the board and upon compliance with requirements prescribed by the board.

(3) Permits must be renewed by the department upon payment of the periodic renewal fee and upon compliance with the requirements prescribed by the board.

History: En. Sec. 13, Ch. 335, L. 1983; amd. Sec. 103, Ch. 429, L. 1995; amd. Sec. 44, Ch. 492, L. 1997.

37-50-318 through 37-50-320 reserved.

37-50-321. Repealed. Sec. 128, Ch. 429, L. 1995.

History: En. Sec. 22, Ch. 118, L. 1969; R.C.M. 1947, 66-1834; amd. Sec. 15, Ch. 684, L. 1979; amd. Sec. 14, Ch. 335, L. 1983.

37-50-322. Repealed. Sec. 128, Ch. 429, L. 1995.

History: En. Sec. 25, Ch. 118, L. 1969; amd. Sec. 176, Ch. 350, L. 1974; R.C.M. 1947, 66-1837; amd. Sec. 15, Ch. 335, L. 1983.

37-50-323 through 37-50-330 reserved.

37-50-331. Partnership composed of certified public accountants — registration. (1) A partnership that is or plans to become engaged in this state in the practice of public accounting shall register with the department as a partnership of certified public accountants provided it meets the following requirements:

(a) Each partner or manager personally engaged in this state in the practice of public accounting must be a certified public accountant of some state in good standing and must be certified under this chapter.

(b) Each partner must be a certified public accountant of some state in good standing.

(2) Application for registration must be made on the affidavit of a general partner of the partnership who is a certified public accountant of this state in good standing. The board shall in each case determine whether the applicant is eligible for registration. A partnership which is registered may use the words "certified public accountants" or the abbreviation "CPAs" in connection with its partnership name. Notification shall be given the department within 1 month after the admission to or withdrawal of a partner from a partnership so registered.

History: En. Sec. 17, Ch. 118, L. 1969; amd. Sec. 170, Ch. 350, L. 1974; R.C.M. 1947, 66-1829; amd. Sec. 16, Ch. 684, L. 1979.

Cross-References

Affidavits, Title 26, ch. 1, part 10.

37-50-332. Corporation composed of certified public accountants — registration. (1) A professional service corporation organized for the practice of public accounting must register with the board as a corporation of certified public accountants provided it meets the following requirements:

(a) The sole purpose and business of the corporation must be to furnish to the public services not inconsistent with this chapter or the rules of the board, but the corporation may invest its funds in a manner not incompatible with the practice of public accounting.

(b) Each shareholder of the corporation must be a certified public accountant of some state in good standing and must be principally employed by the corporation or actively engaged in its business. No other person may have any interest in the stock of the corporation. The principal of the corporation and any officer or director having authority over the practice of public accounting by the corporation must be certified public accountants of some state in good standing.

(c) Each shareholder, officer, or manager of the corporation personally engaged within this state in the practice of public accounting as a member thereof must be a certified public accountant of some state in good standing and must be certified under this chapter.

(2) Application for such registration must be made upon the affidavit of a shareholder who holds a permit to practice in this state as a certified public accountant. The board shall determine whether the applicant is eligible for registration. A corporation which is so registered may use the words "certified public accountant" or the abbreviation "CPA" in connection with its corporation name. Notification shall be given the board within 1 month after the admission or withdrawal of a shareholder of a corporation so registered.

History: En. 66-1829.1 by Sec. 1, Ch. 207, L. 1974; amd. Sec. 11, Ch. 101, L. 1977; R.C.M. 1947, 66-1829.1; amd. Sec. 17, Ch. 684, L. 1979.

Cross-References

Professional service corporations, Title 35, ch. 4.

37-50-333. Partnership composed of public accountants — registration. (1) A partnership engaged in this state in the practice of public accounting must register with the department as a partnership of licensed public accountants, provided it meets the following requirements:

(a) At least one general partner must be a certified public accountant or a licensed public accountant of this state in good standing and a holder of a permit issued under 37-50-314 which is in effect.

(b) Each partner personally engaged in this state in the practice of public accounting must be a certified public accountant or a licensed public accountant of this state in good standing and a holder of a permit issued under 37-50-314 which is in effect.

(c) Each local manager in charge of an office or a firm in this state must be a certified public accountant or a licensed public accountant of this state in good standing and a holder of a permit issued under 37-50-314 which is in effect.

(2) Application for registration must be made on the affidavit of a general partner of the partnership who holds a permit to practice in this state as a certified public accountant or as a licensed public accountant. The board shall in each case determine whether the applicant is eligible for registration. A partnership which is registered may use the words "public accountants" in connection with its partnership name. Notification shall be given the department within 1 month after the admission to or withdrawal of a partner from a partnership so registered.

History: En. Sec. 19, Ch. 118, L. 1969; amd. Sec. 172, Ch. 350, L. 1974; R.C.M. 1947, 66-1831; amd. Sec. 18, Ch. 684, L. 1979; amd. Sec. 16, Ch. 335, L. 1983.

Cross-References

Affidavits, Title 26, ch. 1, part 10.

Partnerships, Title 35, ch. 10.

37-50-334. Corporation composed of public accountants — registration. (1) A professional service corporation organized for the practice of public accounting must register with the board as a corporation of public accountants, provided it meets the following requirements:

(a) The sole purpose and business of the corporation must be to furnish to the public services not inconsistent with this chapter or the rules of the board, but the corporation may invest its funds in a manner not incompatible with the practice of public accounting.

(b) At least one shareholder thereof must be a certified public accountant or public accountant of this state in good standing and must hold a permit issued under 37-50-314 which is in effect.

(c) Each shareholder of the corporation must be a certified public accountant or a licensed public accountant of some state, in good standing, and must be principally employed by the corporation or actively engaged in its business. No other person may have any interest in the stock of the corporation. The principal of the corporation and any officer or director having authority over the practice of public accounting by the corporation must be certified public accountants or public accountants of some state in good standing.

(d) Each shareholder of the corporation personally engaged within this state in the practice of public accounting as a member thereof must be a certified public accountant or a licensed public accountant of this state in good standing and must hold a permit issued under 37-50-314 which is in effect.

(e) In order to facilitate compliance with the provisions of this section relating to the ownership of stock, there must be a written agreement binding the corporation or the qualified shareholders to purchase any shares offered for sale by or not under the ownership or effective control of a qualified shareholder and binding any shareholder not a qualified shareholder to sell such shares to the corporation or the qualified shareholders. The agreement must be noticed on each certificate of corporate stock.

(2) Application for such registration must be made upon the affidavit of a shareholder who holds a permit to practice in this state as a certified public accountant or licensed public accountant. The board shall determine whether the applicant is eligible for registration. A corporation which is so registered may use the words "public accountant" or the abbreviation "PA" in connection with its corporation name. Notification shall be given the board within 1 month after the admission or withdrawal of a shareholder of a corporation so registered.

History: En. 66-1831.1 by Sec. 2, Ch. 207, L. 1974; amd. Sec. 12, Ch. 101, L. 1977; R.C.M. 1947, 66-1831.1; amd. Sec. 19, Ch. 684, L. 1979; amd. Sec. 17, Ch. 335, L. 1983.

Cross-References

Affidavits, Title 26, ch. 1, part 10.

Professional service corporations, Title 35, ch. 4.

37-50-335. Registration of offices. Each office established or maintained in this state for the practice of public accounting in this state by a certified public accountant or a partnership or corporation of certified public accountants or by a licensed public accountant or a partnership or corporation of licensed public accountants or by one registered under 37-50-313 shall be registered annually with the department. A fee may not be charged for this registration. In addition, each individual engaged in this state in the practice of public accounting must have annually received a permit under 37-50-314.

History: En. Sec. 20, Ch. 118, L. 1969; amd. Sec. 3, Ch. 207, L. 1974; amd. Sec. 173, Ch. 350, L. 1974; amd. Sec. 13, Ch. 101, L. 1977; R.C.M. 1947, 66-1832; amd. Sec. 20, Ch. 684, L. 1979; amd. Sec. 18, Ch. 335, L. 1983.

37-50-336. Repealed. Sec. 128, Ch. 429, L. 1995.

History: En. Sec. 23, Ch. 118, L. 1969; amd. Sec. 4, Ch. 207, L. 1974; R.C.M. 1947, 66-1835.

37-50-337 through 37-50-340 reserved.

37-50-341. Initiation of proceedings — hearings and rulemaking. (1) The board may initiate proceedings under this chapter either on its own motion or on the complaint of a person.

(2) Hearings and rulemaking proceedings shall be governed in all respects by the Montana Administrative Procedure Act.

History: En. Sec. 24, Ch. 118, L. 1969; amd. Sec. 175, Ch. 350, L. 1974; R.C.M. 1947, 66-1836.

Cross-References

Montana Administrative Procedure Act, Title 2, ch. 4.

37-50-342. Violation. Any person who violates any provision of this chapter or the rules of the board is guilty of a misdemeanor and upon conviction shall be punished by a fine of not more than $500, by imprisonment in the county jail for not more than 6 months, or by both such fine and imprisonment.

History: En. Sec. 28, Ch. 118, L. 1969; R.C.M. 1947, 66-1840; amd. Sec. 19, Ch. 335, L. 1983.

Part 4

Miscellaneous Provisions

37-50-401. False statements by accountants — misdemeanor — penalty. Any person practicing as an accountant, public accountant, auditor, or certified public accountant in this state who, because of negligence, gross inefficiency, or willfulness, shall issue or permit the issuance of any false statement of the financial transactions, standing, or condition of any corporation, partnership, or individual business undertaking shall be deemed guilty of a misdemeanor and upon conviction thereof shall be fined not less than $500 or more than $2,000 or imprisoned for a period of not less than 90 days or more than 1 year or subjected to both said fine and imprisonment, in the discretion of the court.

History: En. Sec. 8, Ch. 46, L. 1933; re-en. Sec. 3241.8, R.C.M. 1935; R.C.M. 1947, 66-1808.

37-50-402. Privileged communications — exceptions. (1) Except by permission of the client, person, firm, or corporation engaging a certified or licensed public accountant or an employee of the accountant or by permission of the heirs, successors, or personal representatives of the client, person, firm, or corporation and except for the expression of opinions on financial statements, a certified public accountant, licensed public accountant, or employee thereof may not be required to disclose or divulge or voluntarily disclose or divulge information that the certified or licensed accountant or an employee may have relative to and in connection with any professional services as a public accountant. The information derived from or as a result of professional services is considered confidential and privileged.

(2) The provisions of this section do not apply to the testimony or documents of a public accountant furnished pursuant to a subpoena in a court of competent jurisdiction, pursuant to a board proceeding, or in the process of any board-approved practice review program.

History: En. Sec. 29, Ch. 118, L. 1969; R.C.M. 1947, 66-1841; amd. Sec. 20, Ch. 335, L. 1983; amd. Sec. 1, Ch. 82, L. 1993.

Cross-References

Evidence — privileges, Title 26, ch. 1, part 8.

37-50-403. Nonliability — evidential privilege — application to nonprofit corporations. (1) A member of a peer review, professional standards review, or ethics review committee of a society composed of persons licensed to practice the accounting profession is not liable in damages to any person for any action taken or recommendation made within the scope of the functions of the committee if the committee member acts without malice and in the reasonable belief that the action or recommendation is warranted by the facts known to him after reasonable effort to obtain the facts.

(2) The proceedings and records of peer review, professional standards review, and ethics review committees are not subject to discovery or introduction into evidence in any proceeding. However, information otherwise discoverable or admissible from an original source is not to be construed as immune from discovery or use in any proceeding merely because it was presented during proceedings before the committee, nor is a member of the committee or other person appearing before it to be prevented from testifying as to matters within his knowledge; however, he may not be questioned about his testimony or other proceedings before the committee or about opinions or other actions of the committee or any member of the committee.

(3) This section also applies to any member, agent, or employee of a nonprofit corporation engaged in performing the functions of a peer review, professional standards review, or ethics review committee with respect to the profession of accounting.

History: En. Sec. 1, Ch. 197, L. 1991.

CHAPTER 51

REAL ESTATE BROKERS AND SALESPERSONS

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Chapter Cross-References

Licensed broker — exemption from regulation of escrow business, 32-7-103.

Part 1

General

37-51-101. Repealed. Sec. 14, Ch. 497, L. 1979.

History: En. Sec. 1, Ch. 250, L. 1963; amd. Sec. 1, Ch. 261, L. 1969; amd. Sec. 177, Ch. 350, L. 1974; R.C.M. 1947, 66-1924(1).

37-51-102. Definitions. Unless the context requires otherwise, in this chapter, the following definitions apply:

(1) "Account" means the real estate recovery account established in 37-51-501.

(2) (a) "Adverse material fact" means a fact that should be recognized by a broker or salesperson as being of enough significance as to affect a person's decision to enter into a contract to buy or sell real property and may be a fact that:

(i) materially affects the value, affects structural integrity, or presents a documented health risk to occupants of the property; or

(ii) materially affects the buyer's ability or intent to perform the buyer's obligations under a proposed or existing contract.

(b) The term does not include the fact that an occupant of the property has or has had a communicable disease or that the property was the site of a suicide or felony.

(3) "Board" means the board of realty regulation provided for in 2-15-1867.

(4) "Broker" includes an individual who:

(a) for another or for valuable consideration or who with the intent or expectation of receiving valuable consideration negotiates or attempts to negotiate the listing, sale, purchase, rental, exchange, or lease of real estate or of the improvements on real estate or collects rents or attempts to collect rents;

(b) is employed by or on behalf of the owner or lessor of real estate to conduct the sale, leasing, subleasing, or other disposition of real estate for consideration;

(c) engages in the business of charging an advance fee or contracting for collection of a fee in connection with a contract by which the individual undertakes primarily to promote the sale, lease, or other disposition of real estate in this state through its listing in a publication issued primarily for this purpose or for referral of information concerning real estate to brokers;

(d) makes the advertising, sale, lease, or other real estate information available by public display to potential buyers and who aids, attempts, or offers to aid, for a fee, any person in locating or obtaining any real estate for purchase or lease;

(e) aids or attempts or offers to aid, for a fee, any person in locating or obtaining any real estate for purchase or lease;

(f) receives a fee, commission, or other compensation for referring to a licensed broker or salesperson the name of a prospective buyer or seller of real property; or

(g) advertises or represents to the public that the individual is engaged in any of the activities referred to in subsections (4)(a) through (4)(f).

(5) "Broker associate" means a broker who associates, as an employee or independent contractor, with a broker owner and does not own an interest in a real estate firm.

(6) "Broker owner" means a broker who owns or has a financial interest in a real estate firm.

(7) "Buyer" means a person who is interested in acquiring an ownership interest in real property or who has entered into an agreement to acquire an interest in real property. The term includes tenants or potential tenants with respect to leases or rental agreements of real property.

(8) "Buyer agent" means a broker or salesperson who, pursuant to a written buyer broker agreement, is acting as the agent of the buyer in a real estate transaction and includes a buyer subagent and an in-house buyer agent designate.

(9) "Buyer broker agreement" means a written agreement in which a prospective buyer employs a broker to locate real estate of the type and with terms and conditions as designated in the written agreement.

(10) "Buyer subagent" means a broker or salesperson who, pursuant to an offer of a subagency, acts as the agent of a buyer.

(11) "Department" means the department of commerce provided for in Title 2, chapter 15, part 18.

(12) "Dual agent" means a broker or salesperson who, pursuant to a written listing agreement or buyer broker agreement or as a buyer or seller subagent, acts as the agent of both the buyer and seller with written authorization as provided in 37-51-314. An in-house buyer or seller agent designate may not be considered a dual agent.

(13) "Franchise agreement" means a contract or agreement by which:

(a) a franchisee is granted the right to engage in business under a marketing plan prescribed in substantial part by the franchisor;

(b) the operation of the franchisee's business is substantially associated with the franchisor's trademark, trade name, logotype, or other commercial symbol or advertising designating the franchisor; and

(c) the franchisee is required to pay, directly or indirectly, a fee for the right to operate under the agreement.

(14) "In-house buyer agent designate" means a broker associate or salesperson employed by or associated as an independent contractor with a broker owner and designated by the broker owner as the exclusive agent for a buyer for a designated transaction and who may not be considered to be acting for other than the buyer with respect to the designated transaction.

(15) "In-house seller agent designate" means a broker associate or salesperson employed by or associated as an independent contractor with a broker owner and designated by the broker owner as the exclusive agent for a seller for a designated transaction and who may not be considered to be acting for other than the seller with respect to the designated transaction.

(16) "Listing agreement" means a written agreement between a seller and broker for the sale of real estate, with the terms and conditions set out in the agreement.

(17) "Negotiations" means:

(a) efforts to act as an intermediary between parties to a real estate transaction;

(b) facilitating and participating in contract discussions;

(c) completing forms for offers, counteroffers, addendums, and other writings; and

(d) presenting offers and counteroffers.

(18) "Person" includes individuals, partnerships, associations, and corporations, foreign and domestic, except that when referring to a person licensed under this chapter, it means an individual.

(19) "Property manager" includes a person who for a salary, commission, or compensation of any kind engages in the business of leasing, renting,

subleasing, or other transfer of possession of real estate belonging to others without transfer of the title to the property, pursuant to 37-51-601 and 37-51-602.

(20) "Real estate" includes leaseholds as well as any other interest or estate in land, whether corporeal, incorporeal, freehold, or nonfreehold and whether the real estate is situated in this state or elsewhere.

(21) "Real estate transaction" means the sale, exchange, or lease or grant of an option for the sale, exchange, or lease of an interest in real estate and includes all communication, interposition, advisement, negotiation, and contract development and closing.

(22) "Salesperson" includes an individual who for a salary, commission, or compensation of any kind is associated, either directly, indirectly, regularly, or occasionally, with a real estate broker to sell, purchase, or negotiate for the sale, purchase, exchange, or renting of real estate.

(23) "Seller" means a person who has entered into a listing agreement to sell real estate and includes landlords who have an interest in or are a party to a lease or rental agreement.

(24) "Seller agent" means a broker or salesperson who, pursuant to a written listing agreement, acts as the agent of a seller and includes a seller subagent and an in-house seller agent designate.

(25) "Seller subagent" means a broker or salesperson who, pursuant to an offer of a subagency, acts as the agent of a seller.

(26) (a) "Statutory broker" means a broker or salesperson who assists one or more parties to a real estate transaction without acting as an agent or representative of any party to the real estate transaction.

(b) A broker or salesperson is presumed to be acting as a statutory broker unless the broker or salesperson has entered into a listing agreement with a seller or a buyer broker agreement with a buyer or has disclosed, as required in this chapter, a relationship other than that of a statutory broker.

History: En. Sec. 2, Ch. 250, L. 1963; amd. Sec. 2, Ch. 261, L. 1969; amd. Sec. 178, Ch. 350, L. 1974; amd. Sec. 1, Ch. 133, L. 1975; R.C.M. 1947, 66-1925; amd. Sec. 1, Ch. 188, L. 1979; amd. Sec. 1, Ch. 306, L. 1979; amd. Sec. 3, Ch. 497, L. 1979; amd. Sec. 3, Ch. 274, L. 1981; amd. Sec. 1, Ch. 688, L. 1985; amd. Sec. 1, Ch. 314, L. 1989; amd. Sec. 1, Ch. 125, L. 1991; amd. Sec. 1, Ch. 142, L. 1993; amd. Sec. 1, Ch. 565, L. 1995.

Cross-References

Real property defined, 70-15-101.

37-51-103. Exemptions. (1) An act performed for compensation of any kind in the buying, selling, exchanging, leasing, or renting of real estate or in negotiating a real estate transaction for others, except as specified in this section, must identify the person performing any of the acts as a real estate broker or a real estate salesperson. The provisions of this chapter do not:

(a) apply to any person who, as owner or lessor, performs any acts listed in subsection (1) with reference to property owned or leased by the person or to an auctioneer employed by the owner or lessor to aid and assist in conducting a public sale held by the owner or lessor;

(b) apply to any person acting as attorney-in-fact under a special or general power of attorney from the owner of any real estate authorizing the purchase, sale, exchange, renting, or leasing of any real estate, unless the person acting as attorney-in-fact does so regularly or consistently for a person or persons, for or with the expectation of receiving a fee, commission, or other valuable consideration in conjunction with a business or for the purpose of avoiding license requirements;

(c) include in any way the services rendered by any attorney at law in the performance of the attorney's duties;

(d) apply to any person appointed by a court for the purpose of evaluating or appraising an estate in a probate matter;

(e) include a receiver, a trustee in bankruptcy, an administrator or executor, any person selling real estate under order of any court, a trustee under a trust agreement, deed of trust, or will, or an auctioneer employed by a receiver, trustee in bankruptcy, administrator, executor, or trustee to aid and assist in conducting a public sale held by the officer;

(f) apply to public officials in the conduct of their official duties;

(g) apply to any person, partnership, association, or corporation, foreign or domestic, performing any act with respect to prospecting, leasing, drilling, or operating land for hydrocarbons and hard minerals or disposing of any hydrocarbons, hard minerals, or mining rights, whether upon a royalty basis or otherwise;

(h) apply to persons acting as managers of housing complexes for low-income persons, which are subsidized, directly or indirectly, by Montana or an agency or subdivision of Montana or by the government of the United States or an agency of the United States; or

(i) apply to a person performing any act with respect to the following types of land transactions:

(i) right-of-way transfers for roads, utilities, and other public purposes, not including conservation easements or easements for recreational purposes;

(ii) condemnations; or

(iii) governmental or tribal permits.

(2) The provisions of this chapter do not apply to a newspaper or other publication of general circulation or to a radio or television station engaged in the normal course of business.

History: En. Sec. 3, Ch. 250, L. 1963; amd. Sec. 1, Ch. 385, L. 1977; R.C.M. 1947, 66-1926; amd. Sec. 1, Ch. 180, L. 1989; amd. Sec. 2, Ch. 314, L. 1989; amd. Sec. 6, Ch. 565, L. 1995; amd. Sec. 1, Ch. 251, L. 1997.

37-51-104. Chapter supplemental to deceptive practices law. Nothing contained herein may be construed to amend or modify 45-6-317 or 45-6-318. This chapter shall be construed to be supplemental to 45-6-317 and 45-6-318.

History: En. Sec. 25, Ch. 250, L. 1963; amd. Sec. 16, Ch. 101, L. 1977; R.C.M. 1947, 66-1946.

37-51-105. Sexual or violent offender registration information — responsibility of broker or salesperson. The responsibility of a broker or salesperson with respect to sexual or violent offender registration information maintained by a governmental entity under Title 46, chapter 23, part 5, is limited to disclosure of:

(1) the fact that the information may be maintained and by whom; and

(2) the actual knowledge, if any, that the broker or salesperson has of sexual or violent offender registration information that pertains to the property in question.

History: En. Sec. 1, Ch. 99, L. 1999.

Compiler's Comments

Effective Date: Section 3, Ch. 99, L. 1999, provided that this section is effective on passage and approval. Approved March 17, 1999.

Part 2
Board of Realty Regulation

Part Cross-References

Right to know, Art. II, sec. 9, Mont. Const.

Seal defined, 1-4-201.

Public records, Title 2, ch. 6.

Allocation of boards for administrative purposes, 2-15-121.

Quasi-judicial boards, 2-15-124.

Board established, 2-15-1867.

Entries in official books and records prima facie evidence, 26-1-605.

Entry made by officer or Board prima facie evidence, 26-1-606.

Requirement of authentication or identification, Rule 901, M.R.Ev. (see Title 26, ch. 10).

Self-authentication, Rule 902, M.R.Ev. (see Title 26, ch. 10).

Public records, Rule 1005, M.R.Ev. (see Title 26, ch. 10).

Duties of Department, Director, and boards, Title 37, ch. 1, part 1.

Licensing boards to establish fees commensurate with costs, 37-1-134.

37-51-201. Chairman — seal — records — prohibition on membership in real estate associations. (1) The members of the board shall elect a chairman from among their number.

(2) The board shall adopt a seal of a design as it shall prescribe. Copies of records and papers kept by the department, certified by the chairman and authenticated by the seal of the board, shall be received in evidence in courts with like effect as the original. Records of the board are open to public inspection under rules it prescribes.

(3) The department shall keep a record of proceedings, transactions, communications, and official acts of the board; be custodian of the records of the board; and cause to be performed other duties as the board, on the written request of two or more members of the board or at other times as the chairman in his discretion, considers necessary.

(4) Neither the chairman nor an employee of the department hired to provide services to the board may be an officer or paid employee of any real estate association or group of real estate dealers or brokers.

History: (1)En. 66-1927.1 by Sec. 2, Ch. 378, L. 1977; Sec. 66-1927.1, R.C.M. 1947; (2) thru (4)En. Sec. 4, Ch. 250, L. 1963; amd. Sec. 179, Ch. 350, L. 1974; amd. Sec. 36, Ch. 439, L. 1975; Sec. 66-1927, R.C.M. 1947; R.C.M. 1947, 66-1927(2), (4), 66-1927.1.

37-51-202. General licensing power. The board may regulate the issuance of licenses and revoke or suspend licenses issued under this chapter.

History: En. Sec. 8, Ch. 250, L. 1963; amd. Sec. 182, Ch. 350, L. 1974; R.C.M. 1947, 66-1931.

37-51-203. Rulemaking power. The board shall from time to time adopt rules to carry out the provisions of this chapter.

History: En. Sec. 4, Ch. 250, L. 1963; amd. Sec. 179, Ch. 350, L. 1974; amd. Sec. 36, Ch. 439, L. 1975; R.C.M. 1947, 66-1927(1).

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

37-51-204. Educational programs. (1) The board may, subject to 37-1-101, conduct, hold, or assist in conducting or holding real estate clinics, meetings, courses, or institutes and incur necessary expenses in this connection.

(2) Except as provided in 37-51-302, the board may not require examinations of licensees.

History: En. Sec. 20, Ch. 250, L. 1963; amd. Sec. 190, Ch. 350, L. 1974; R.C.M. 1947, 66-1943; amd. Sec. 1, Ch. 269, L. 1985; amd. Sec. 104, Ch. 429, L. 1995.

37-51-205. Compensation of members — expenses. Each member of the board shall receive compensation and travel expenses as provided for in 37-1-133.

History: En. Sec. 4, Ch. 250, L. 1963; amd. Sec. 179, Ch. 350, L. 1974; amd. Sec. 36, Ch. 439, L. 1975; R.C.M. 1947, 66-1927(3); amd. Sec. 4, Ch. 497, L. 1979; amd. Sec. 29, Ch. 474, L. 1981.

37-51-206. Repealed. Sec. 128, Ch. 429, L. 1995.

History: En. Sec. 21, Ch. 250, L. 1963; amd. Sec. 191, Ch. 350, L. 1974; R.C.M. 1947, 66-1944; amd. Sec. 1, Ch. 277, L. 1983.

37-51-207. Schedule of fees. The board shall adopt a schedule of fees to be charged by the department and to be paid into the state special revenue fund for the use of the board. The fees charged must be reasonably related to the cost incurred in regulating the real estate industry.

History: En. Sec. 5, Ch. 497, L. 1979; amd. Sec. 1, Ch. 277, L. 1983.

37-51-208. Deposit of money not otherwise provided for. Whenever money is received by the board or by the department for the use of the board and there is no provision for the disposition or deposit of the money, the money is to be deposited in the state special revenue fund for the use of the board.

History: En. Sec. 1, Ch. 515, L. 1979; amd. Sec. 1, Ch. 277, L. 1983.

37-51-209. Executive secretary — hiring, duties, and qualifications. (1) The department of commerce may hire an executive secretary to carry out duties prescribed by the board pursuant to the board's responsibilities and duties established by law.

(2) The person hired to be executive secretary:

(a) shall possess at least a bachelor's degree from an accredited college or university;

(b) may not be an officer or paid employee of a real estate association or group of real estate dealers or brokers;

(c) must be a citizen of the United States of America; and

(d) must be of good moral character.

History: En. Sec. 1, Ch. 270, L. 1991.

Part 3

Licensing

Part Cross-References

Licensing to follow contested case procedure, 2-4-631.

Suspension of license fees for persons in military service, 10-1-605.

Unfair trade practices and consumer protection, Title 30, ch. 14.

Duty of Department to administer and grade examinations and to investigate unprofessional conduct, 37-1-101.

Reporting disciplinary actions against licensees, 37-1-105.

Duties of Director in investigation of unethical conduct, 37-1-121.

Duty of Board to adopt and enforce licensing and certification rules and to adopt rules on conduct, 37-1-131.

Licensing boards to establish fees commensurate with costs, 37-1-134.
Licensing investigation and review — record access, 37-1-135.
Disciplinary authority of boards — injunctions, 37-1-136.
Grounds for disciplinary action as grounds for license denial — conditions to new licenses, 37-1-137.
Licensure of criminal offenders, Title 37, ch. 1, part 2.
Nondiscrimination in licensing, 49-3-204.

37-51-301. License required — limited to persons. (1) It is unlawful for a person to engage in or conduct, directly or indirectly, or to advertise or hold himself out as engaging in or conducting the business or acting in the capacity of a real estate broker or a real estate salesperson within this state without a license as a broker or salesperson or otherwise complying with this chapter.

(2) Corporations, partnerships, and associations may not be licensed under this chapter. A corporation or a partnership may act as a licensee if every corporate officer and every partner performing the functions of a licensee is licensed under this chapter. All officers of a corporation or all members of a partnership acting as a licensee are in violation of this chapter unless there is full compliance with this subsection.

History: En. Sec. 1, Ch. 250, L. 1963; amd. Sec. 1, Ch. 261, L. 1969; amd. Sec. 177, Ch. 350, L. 1974; R.C.M. 1947, 66-1924(2), (3); amd. Sec. 93, Ch. 370, L. 1987; amd. Sec. 1, Ch. 259, L. 1989; amd. Sec. 6, Ch. 565, L. 1995.

Cross-References

Criminal responsibility and accountability of corporations, 45-2-311, 45-2-312.

37-51-302. Broker or salesperson license — qualifications of applicant. (1) Licenses may be granted only to individuals considered by the board to be of good repute and competent to transact the business of a broker or salesperson in a manner as to safeguard the interests of the public.

(2) An applicant for a broker's license shall:

(a) be at least 18 years of age;

(b) have graduated from an accredited high school or completed an equivalent education as determined by the board;

(c) have been actively engaged as a licensed real estate salesperson for a period of 2 years or have had experience or special education equivalent to that which a licensed real estate salesperson ordinarily would receive during this 2-year period as determined by the board, except that if the board finds that an applicant could not obtain employment as a licensed real estate salesperson because of conditions existing in the area where he resides, the board may waive this experience requirement;

(d) file an application for license with the department; and

(e) furnish written evidence that he has completed 60 classroom or equivalent hours (in addition to those required to secure a salesperson's license) in a course of study approved by the board and taught by instructors approved by the board and has satisfactorily passed an examination dealing with the material taught in each course. The course of study must include the subjects of real estate principles, real estate law, real estate finance, and related topics.

(3) The board shall require information it considers necessary from an applicant to determine his honesty, trustworthiness, and competency.

(4) (a) An applicant for a salesperson's license shall:

(i) be at least 18 years of age;

(ii) have received credit for completion of 2 years of full curriculum study at an accredited high school or completed an equivalent education as determined by the board;

(iii) file an application for license with the department; and

(iv) furnish written evidence that he has completed 60 classroom or equivalent hours in a course of study approved by the board and taught by instructors approved by the board and has satisfactorily passed an examination dealing with the material taught in each course. The course of study must include the subjects of real estate principles, real estate law and ethics, real estate finance, and related topics.

(b) His application shall be accompanied by the recommendation of the licensed broker by whom the applicant will be employed or placed under contract, certifying that the applicant is of good repute and that the broker will actively supervise and train the applicant during the period the requested license remains in effect.

(5) The department shall issue to each licensed broker and to each licensed salesperson a license and a pocket card in a form and size as the board prescribes.

(6) A broker's license must indicate whether the broker is a broker owner or a broker associate.

History: En. Sec. 6, Ch. 250, L. 1963; amd. Sec. 3, Ch. 261, L. 1969; amd. Sec. 10, Ch. 423, L. 1971; amd. Sec. 180, Ch. 350, L. 1974; R.C.M. 1947, 66-1929; amd. Sec. 2, Ch. 306, L. 1979; amd. Sec. 7, Ch. 341, L. 1981; amd. Sec. 2, Ch. 269, L. 1985; amd. Sec. 6, Ch. 565, L. 1995.

37-51-303. Broker or salesperson examination. (1) In addition to proof of honesty, trustworthiness, and good reputation, an applicant whose application is then pending shall satisfactorily pass a written examination prepared by or under the supervision of the board. The examination shall be given at least once each 6 months and at places within the state the board prescribes.

(2) (a) The examination for a salesperson's license shall include:

(i) business ethics, writing, composition, arithmetic, elementary principles of land economics and appraisal;

(ii) a general knowledge of the statutes of this state relating to deeds, mortgages, contracts of sale, agency, brokerage, and of this chapter.

(b) If the applicant passes one subject portion of the examination, (2)(a)(i) or (2)(a)(ii), he shall not be required to repeat that portion of the examination if he passes the remaining portion within 12 months.

(3) The examination for a broker's license shall be of a more exacting nature and scope and more stringent than the examination for a salesperson's license.

History: En. Sec. 7, Ch. 250, L. 1963; amd. Sec. 181, Ch. 350, L. 1974; R.C.M. 1947, 66-1930; amd. Sec. 1, Ch. 595, L. 1981; amd. Sec. 6, Ch. 565, L. 1995.

37-51-304. Repealed. Sec. 15, Ch. 688, L. 1985.

History: En. Sec. 10, Ch. 250, L. 1963; amd. Sec. 4, Ch. 261, L. 1969; amd. Sec. 184, Ch. 350, L. 1974; amd. Sec. 15, Ch. 101, L. 1977; R.C.M. 1947, 66-1933.

37-51-305. License — form — delivery — display — pocket card. (1) The board shall prescribe the form of license. A license shall bear the seal of the board.

(2) The license of a real estate salesperson shall be delivered or mailed to the real estate broker with whom the real estate salesperson is associated and shall be kept in the custody and control of the broker.

(3) A broker shall display his own license conspicuously in his place of business.

(4) The department shall annually prepare and deliver a pocket card certifying that the person whose name appears is a registered real estate broker or a registered real estate salesperson, stating the period for which fees have been paid and, on real estate salesperson's cards only, the name and address of the broker with whom he is associated.

History: En. Sec. 9, Ch. 250, L. 1963; amd. Sec. 183, Ch. 350, L. 1974; R.C.M. 1947, 66-1932; amd. Sec. 3, Ch. 306, L. 1979; amd. Sec. 6, Ch. 565, L. 1995.

Cross-References

Jurisdiction of persons, Rule 4B, M.R.Civ.P. (see Title 25, ch. 20).

37-51-306. Transactions with nonresidents and with nonlicensed brokers or salespersons — consent to legal process. (1) A licensed broker may not employ or compensate, directly or indirectly, a person for performing the acts regulated by this chapter who is not a licensed broker or licensed salesperson. However, a licensed broker may pay a commission to a licensed broker of another state or jurisdiction if the nonresident broker has not conducted and does not conduct in this state a service for which a fee, compensation, or commission is paid.

(2) A nonresident licensee shall file an irrevocable written consent that legal actions arising out of a commenced or completed transaction may be commenced against the nonresident licensee in a county of this state that may be appropriate and designated by Title 25, chapter 2, part 1. The consent must provide that service of summons in this action may be served on the department for and on behalf of the nonresident licensee, and this service is sufficient to give the court jurisdiction over the licensee conducting a transaction in a county. The consent must be acknowledged and, if made by a corporation, must be authenticated by its seal.

History: En. Sec. 13, Ch. 250, L. 1963; amd. Sec. 187, Ch. 350, L. 1974; R.C.M. 1947, 66-1936; amd. Sec. 1, Ch. 11, L. 1991; amd. Sec. 105, Ch. 429, L. 1995; amd. Sec. 6, Ch. 565, L. 1995; amd. Sec. 1, Ch. 170, L. 1999.

Compiler's Comments

1999 Amendment: Chapter 170 in (1) near middle of second sentence after "another state" inserted "or jurisdiction". Amendment effective March 24, 1999.

Cross-References

Rules for determining residency, 1-1-215.

37-51-307. Directory of licensees. The department shall annually publish a directory of licensees, including a list of licenses suspended and revoked, which shall contain such other data the board determines to be in the interest of real estate licensees and the public.

History: En. Sec. 22, Ch. 250, L. 1963; amd. Sec. 192, Ch. 350, L. 1974; R.C.M. 1947, 66-1945.

Cross-References

Prohibition on distribution or sale of mailing lists, 2-6-109.

37-51-308. Broker's office — notice to department of change of address. (1) A resident licensed broker shall maintain a fixed office in this state. The original license of the broker and the original license of each salesperson associated or under contract with the broker shall be prominently displayed in the office. The address of the office and any branch office shall be designated on the broker's license.

(2) In case of removal from the designated address, the licensee shall notify the department before removal or within 10 days thereafter, designating the new location of this office and paying the required fee, whereupon a license for the new location must be issued for the unexpired period.

History: En. Sec. 12, Ch. 250, L. 1963; amd. Sec. 186, Ch. 350, L. 1974; R.C.M. 1947, 66-1935(1); amd. Sec. 21, Ch. 22, L. 1979; amd. Sec. 4, Ch. 306, L. 1979; amd. Sec. 6, Ch. 565, L. 1995.

37-51-309. Broker owner — broker associate — salesperson — notice to department of change of association. (1) A salesperson may not be associated with or under contract to more than one licensed broker owner, nor may he perform services for a broker other than the one designated on the license issued to the salesperson.

(2) When a licensed salesperson desires to change his association or contractual relationship from one licensed broker to another, he shall notify the department promptly in writing of these facts, pay the required fee, and return his license and pocket card, and a new license and pocket card shall be issued. No salesperson shall directly or indirectly work for or with a broker owner until he has been issued a license to work for or with that broker owner. On termination of a salesperson's association or contractual relationship, he shall surrender his license and pocket card to his broker owner who shall return them to the department for cancellation.

(3) Only one license shall be issued to a salesperson to be in effect at one time.

(4) A broker associate may not be associated with more than one broker owner.

History: En. Sec. 12, Ch. 250, L. 1963; amd. Sec. 186, Ch. 350, L. 1974; R.C.M. 1947, 66-1935(2), (3); amd. Sec. 5, Ch. 306, L. 1979; amd. Sec. 6, Ch. 565, L. 1995.

37-51-310. Renewal. (1) License fees are due and payable for the ensuing licensure period at a time prescribed by department rule. Failure to remit renewal fees before the expiration date of the licensure period automatically cancels the license, but otherwise the license remains in effect continuously from the date of issuance unless suspended or revoked by the board for just cause.

(2) A licensee who allows the license to lapse by failing to remit the fees before the expiration date may have the license reinstated by the board by:

(a) within 45 days after the expiration date, providing a satisfactory explanation to the board for the licensee's failure to renew the license; and

(b) paying the current renewal fee prescribed by the board.

(3) The board may also charge a late fee equal to twice the current renewal fee, but not less than $100, to a licensee who does not renew the license as required by subsection (1).

(4) A licensee shall submit proof of completion of continuing education within the time and in the manner required by the board. If a licensee fails to

submit the proof, the board shall notify the licensee of the failure and provide the licensee the opportunity to present to the board the reasons for the failure. Upon failure of the licensee to show good cause for failing to submit timely proof of completion of continuing education, the board may suspend the individual's license. After suspension, the licensee is entitled to a hearing on the suspension in accordance with the provisions of chapter 1, part 3, of this title and the contested case provisions of the Montana Administrative Procedure Act.

History: En. Sec. 11, Ch. 250, L. 1963; amd. Sec. 185, Ch. 350, L. 1974; amd. Sec. 13, Ch. 533, L. 1977; R.C.M. 1947, 66-1934(3); amd. Sec. 1, Ch. 275, L. 1985; amd. Sec. 1, Ch. 306, L. 1987; amd. Sec. 45, Ch. 492, L. 1997; amd. Sec. 2, Ch. 170, L. 1999.

Compiler's Comments

1999 Amendment: Chapter 170 inserted (4) regarding submission of proof of completion of continuing education; and made minor changes in style. Amendment effective March 24, 1999.

37-51-311. Fees — deposit of fees. The fees prescribed by the board must be charged by the department and paid into the state special revenue fund for the use of the board, subject to 37-1-101(6).

History: En. Sec. 11, Ch. 250, L. 1963; amd. Sec. 185, Ch. 350, L. 1974; amd. Sec. 13, Ch. 533, L. 1977; R.C.M. 1947, 66-1934(1), (2); amd. Sec. 6, Ch. 306, L. 1979; amd. Sec. 65, Ch. 345, L. 1981; amd. Sec. 1, Ch. 277, L. 1983; amd. Sec. 2, Ch. 688, L. 1985; amd. Sec. 106, Ch. 429, L. 1995.

Cross-References

Recovery account assessment fee, 37-51-502.

37-51-312. No taxation by municipality. No license fee or tax may be imposed on a real estate broker or salesperson by a municipality or any other political subdivision of the state.

History: En. Sec. 11, Ch. 250, L. 1963; amd. Sec. 185, Ch. 350, L. 1974; amd. Sec. 13, Ch. 533, L. 1977; R.C.M. 1947, 66-1934(4); amd. Sec. 6, Ch. 565, L. 1995.

37-51-313. Duties, duration, and termination of relationship between broker or salesperson and buyer or seller. (1) The provisions of this chapter and the duties described in this section govern the relationships between brokers or salespersons and buyers or sellers and are intended to replace the duties of agents as provided elsewhere in state law and replace the common law as applied to these relationships. The terms "buyer agent", "dual agent" and "seller agent", as used in this chapter, are defined in 37-51-102 and are not related to the term "agent" as used elsewhere in state law. The duties of a broker or salesperson vary depending upon the relationship with a party to a real estate transaction and are as provided in this section.

(2) A seller agent is obligated to the seller to:

(a) act solely in the best interests of the seller;

(b) obey promptly and efficiently all lawful instructions of the seller;

(c) disclose all relevant and material information that concerns the real estate transaction and that is known to the seller agent and not known or discoverable by the seller, unless the information is subject to confidentiality arising from a prior or existing agency relationship on the part of the seller agent;

(d) safeguard the seller's confidences;

(e) exercise reasonable care, skill, and diligence in pursuing the seller's objectives and in complying with the terms established in the listing agreement;

(f) fully account to the seller for any funds or property of the seller that comes into the seller agent's possession; and

(g) comply with all applicable federal and state laws, rules, and regulations.

(3) A seller agent is obligated to the buyer to:

(a) disclose to a buyer or the buyer agent any adverse material facts that concern the property and that are known to the seller agent, except that the seller agent is not required to inspect the property or verify any statements made by the seller;

(b) disclose to a buyer or the buyer agent when the seller agent has no personal knowledge of the veracity of information regarding adverse material facts that concern the property;

(c) act in good faith with a buyer and a buyer agent; and

(d) comply with all applicable federal and state laws, rules, and regulations.

(4) A buyer agent is obligated to the buyer to:

(a) act solely in the best interests of the buyer;

(b) obey promptly and efficiently all lawful instructions of the buyer;

(c) disclose all relevant and material information that concerns the real estate transaction and that is known to the buyer agent and not known or discoverable by the buyer, unless the information is subject to confidentiality arising from a prior or existing agency relationship on the part of the buyer agent;

(d) safeguard the buyer's confidences;

(e) exercise reasonable care, skill, and diligence in pursuing the buyer's objectives and in complying with the terms established in the buyer broker agreement;

(f) fully account to the buyer for any funds or property of the buyer that comes into the buyer agent's possession; and

(g) comply with all applicable federal and state laws, rules, and regulations.

(5) A buyer agent is obligated to the seller to:

(a) disclose any adverse material facts that are known to the buyer agent and that concern the ability of the buyer to perform on any purchase offer;

(b) disclose to the seller or the seller agent when the buyer agent has no personal knowledge of the veracity of information regarding adverse material facts that concern the property;

(c) act in good faith with a seller and a seller agent; and

(d) comply with all applicable federal and state laws, rules, and regulations.

(6) A statutory broker is not the agent of the buyer or seller but nevertheless is obligated to them to:

(a) disclose to:

(i) a buyer or a buyer agent any adverse material facts that concern the property and that are known to the statutory broker, except that the statutory broker is not required to inspect the property or verify any statements made by the seller;

(ii) a seller or a seller agent any adverse material facts that are known to the statutory broker and that concern the ability of the buyer to perform on any purchase offer;

(b) exercise reasonable care, skill, and diligence in putting together a real estate transaction; and

(c) comply with all applicable federal and state laws, rules, and regulations.

(7) A dual agent is obligated to a seller in the same manner as a seller agent and is obligated to a buyer in the same manner as a buyer agent under this section, except as follows:

(a) a dual agent has a duty to disclose to a buyer or seller any adverse material facts that are known to the dual agent, regardless of any confidentiality considerations; and

(b) a dual agent may not disclose the following information without the written consent of the person to whom the information is confidential:

(i) the fact that the buyer is willing to pay more than the offered purchase price;

(ii) the fact that the seller is willing to accept less than the purchase price that the seller is asking for the property;

(iii) factors motivating either party to buy or sell; and

(iv) any information that a party indicates in writing to the dual agent is to be kept confidential.

(8) (a) The agency relationship of a buyer agent, seller agent, or dual agent continues until the earliest of the following dates:

(i) completion of performance by the agent;

(ii) the expiration date agreed to in the listing agreement or buyer broker agreement; or

(iii) the occurrence of any authorized termination of the listing agreement or buyer broker agreement.

(b) A statutory broker's relationship continues until the completion, termination, or abandonment of the real estate transaction giving rise to the relationship.

(9) Upon termination of an agency relationship, a broker or salesperson does not have any further duties to the principal, except as follows:

(a) to account for all money and property of the principal;

(b) to keep confidential all information received during the course of the agency relationship that was made confidential at the principal's direction, except for:

(i) subsequent conduct by the principal that authorizes disclosure;

(ii) disclosure required by law or to prevent the commission of a crime;

(iii) the information being disclosed by someone other than the broker or salesperson; and

(iv) the disclosure of the information being reasonably necessary to defend the conduct of the broker or salesperson, including employees, independent contractors, and subagents.

(10) Consistent with the licensee's duties as a buyer agent, a seller agent, a dual agent, or a statutory broker, a licensee shall endeavor to ascertain all pertinent facts concerning each property in any transaction in which the

licensee acts so that the licensee may fulfill the obligation to avoid error, exaggeration, misrepresentation, or concealment of pertinent facts.

History: En. Sec. 3, Ch. 565, L. 1995; amd. Sec. 3, Ch. 170, L. 1999.

Compiler's Comments

1999 Amendment: Chapter 170 in (1) in first sentence after "intended to" inserted "replace the duties of agents as provided elsewhere in state law and" and inserted second sentence defining terms; and made minor changes in style. Amendment effective March 24, 1999.

37-51-314. Relationship disclosure requirements. (1) A broker or salesperson shall disclose the existence and nature of relevant agency or other relationships to the parties to a real estate transaction as provided in this section.

(2) A seller agent shall make the required relationship disclosures as follows:

(a) The initial disclosure, as provided in subsection (6), must be made to the seller at the time the listing agreement is executed.

(b) If a broker or salesperson is acting as a seller subagent, a subsequent disclosure, as provided in subsection (7), must be made to the seller at the time negotiations commence.

(c) The subsequent disclosure established in subsection (7) must be made to the buyer or buyer agent at the time negotiations commence.

(3) A buyer agent shall make the required relationship disclosures as follows:

(a) The initial disclosure, as provided in subsection (6), must be made to the buyer at the time the buyer broker agreement is executed.

(b) If a broker or a salesperson is acting as a buyer subagent, a subsequent disclosure, as provided in subsection (7), must be made to the buyer at the time negotiations commence.

(c) The subsequent disclosure established in subsection (7) must be made to the seller or seller agent at the time negotiations commence.

(4) A statutory broker shall make the required relationship disclosures as follows:

(a) The initial disclosure, as provided in subsection (6), must be made to the buyer at the time the statutory broker first endeavors to locate property for the buyer.

(b) The subsequent disclosure, as provided in subsection (7), must be made to the seller or seller agent at the time negotiations commence.

(5) A buyer agent or seller agent who contemplates becoming or subsequently becomes a dual agent shall disclose the potential or actual relationship to the buyer and seller and receive their consent prior to the time or at the time that the dual agency arises. If the buyer agent or seller agent who contemplates becoming a dual agent has not previously given the buyer or seller the initial disclosure, as provided in subsection (6), the initial disclosure must be used, but if the initial disclosure has been given, any subsequent disclosures must take the form of the disclosure provided in subsection (7).

(6) The initial disclosure as required by subsections (2)(a), (3)(a), (4)(a), and (5) must be written and contain substantially the following information:

(a) a description of the duties owed by the broker and the salesperson as set forth in 37-51-313;

(b) a statement that reads as follows: "IF A SELLER AGENT IS ALSO REPRESENTING A BUYER OR A BUYER AGENT IS ALSO REPRESENTING A SELLER WITH REGARD TO A PROPERTY, THEN A DUAL AGENCY RELATIONSHIP MAY BE ESTABLISHED. IN A DUAL AGENCY RELATIONSHIP, THE DUAL AGENT IS EQUALLY OBLIGATED TO BOTH THE SELLER AND THE BUYER. THESE OBLIGATIONS MAY PROHIBIT THE DUAL AGENT FROM ADVOCATING EXCLUSIVELY ON BEHALF OF THE SELLER OR BUYER AND MAY LIMIT THE DEPTH AND DEGREE OF REPRESENTATION THAT YOU RECEIVE. A BROKER OR A SALESPERSON MAY NOT ACT AS A DUAL AGENT WITHOUT THE SIGNED, WRITTEN CONSENT OF BOTH THE SELLER AND THE BUYER".

(c) a definition of "adverse material fact";

(d) identification of the type of relationship disclosed;

(e) the signature of the seller or the buyer to whom the disclosure is given;

(f) the signature of the broker or the salesperson making the disclosure; and

(g) the date of the disclosure.

(7) The subsequent disclosure required by subsections (2)(b), (2)(c), (3)(b), (3)(c), (4)(b), and (5) or otherwise necessitated by a change or prospective change in a relationship described in a previous disclosure must be written, must contain the information required in subsections (6)(d), (6)(e), and (6)(g), and may be included in other documents involved in the real estate transaction. If a seller or buyer has not previously consented to the entry of the broker or the salesperson into a dual agency relationship, a subsequent disclosure must include all the information required in subsection (6), including the seller's or buyer's written consent to the dual agency relationship.

(8) Any disclosure required by this section may contain the following information:

(a) a description of the other relationships and corresponding duties available under this part, as long as the disclosure clearly indicates the relationship being disclosed;

(b) a consent to the creation of a dual agency relationship;

(c) other definitions in or provisions of this chapter; and

(d) other information not inconsistent with the information required in the disclosure.

(9) A written disclosure that complies with the provisions of this section must be construed as a sufficient disclosure of the relationship between a broker or salesperson and a buyer or seller and must be construed as conclusively establishing the obligations owed by a broker or salesperson to a buyer or seller in a real estate transaction.

History: En. Sec. 4, Ch. 565, L. 1995; amd. Sec. 4, Ch. 170, L. 1999.

Compiler's Comments

1999 Amendment: Chapter 170 in (2)(a) at beginning inserted "The initial disclosure, as provided in subsection (6), must be made" and at end deleted "or, if the seller agent is acting as a seller subagent, at the time negotiations commence"; inserted (2)(b) regarding disclosure of a broker acting as a seller subagent; in (2)(c) at beginning inserted "The subsequent disclosure established in subsection (7) must be made"; in (3)(a) at beginning inserted "The initial disclosure, as provided in subsection (6), must be made" and at end deleted "or, if the buyer agent is acting as a buyer subagent, at the time negotiations commence"; inserted (3)(b) regarding disclosure of a broker acting as a buyer subagent; in (3)(c) at beginning inserted "The subsequent disclosure established in subsection (7) must be made"; inserted (4)(a) and (4)(b) regarding initial and subsequent disclosure; in (5) in first sentence after "agent who" inserted "contemplates becoming or" and after "disclose the" inserted "potential or actual" and inserted second sentence regarding disclosure by an agent who contemplates becoming a dual agent; substituted language in (6) setting out the form of initial disclosure for former text that read: "(6) A disclosure required by this section must be signed and dated by the party to whom the disclosure is directed and by the broker or salesperson. A disclosure must contain substantially the following information:

(a) Seller agent disclosure to the seller: "(Name of seller agent) will be representing you as your agent or subagent in the sale of your property located at (address of property). Your seller agent is obligated to you as enumerated below. If your seller agent is also representing a buyer who becomes interested in your property, a dual agency may be created. In a dual agency relationship, the seller agent is obligated to the buyer in the same way as to you. This conflict will prohibit the seller agent from advocating exclusively on your behalf or the buyer's behalf and may limit the level of representation you receive. If the potential for a dual agency arises, the seller agent shall provide you with a dual agent disclosure. A seller agent cannot act as a dual agent without your consent and that of the buyer. This consent is given by you and the buyer signing the dual agent disclosure. If you or the buyer declines to give this consent, your opportunity to sell your property to that buyer may be lost.

Your seller agent is obligated to you as follows:

(1) to act solely in the best interests of the seller to the exclusion of all other interests, including those of the seller agent;

(2) to obey promptly and efficiently all lawful instructions of the seller;

(3) to disclose to the seller all relevant and material information that concerns the real estate transaction and that is known by the seller agent and not known by the seller, unless the information is subject to confidentiality arising from a prior or existing agency relationship;

(4) to safeguard the seller's confidences;

(5) to exercise reasonable skill, care, and diligence in pursuing the seller's objectives as established in the listing agreement;

(6) to fully account to the seller for all funds or property of the seller coming into the seller agent's possession;

(7) to comply with all applicable federal and state laws, rules, and regulations; and

(8) to carry out the terms of the listing agreement."

(b) Seller agent disclosure to the buyer: "(Name of seller agent) is the agent of the seller with respect to the seller's property located at (address of property). Although the seller agent is primarily obligated to the seller, the seller agent is obligated to you as specified below.

A seller agent is obligated to a buyer as follows:

(1) to disclose to a buyer any adverse material facts that concern the property and that are known to the seller agent;

(2) to deal in good faith with the buyer; and

(3) to comply with all applicable federal and state laws, rules, and regulations.

"Adverse material fact" means a fact that should be recognized by a broker as being of enough significance as to affect a person's decision to enter into a contract to buy or sell real property and may be a fact that materially affects the value or structural integrity or presents a documented health risk to occupants of the property. The term may not include the fact that an occupant of the property has or has had a communicable disease or that the property was the site of a suicide or felony."

(c) Buyer agent disclosure to the buyer: "(Name of buyer agent) will be representing you as your agent or subagent in the purchase of real property of the nature described in the buyer broker agreement. Your buyer agent is obligated to you as enumerated below. If your buyer agent is also representing a seller of property that you become interested in, a dual agency may be created. In a dual agency relationship, the buyer agent is obligated to the seller in the same way as to you. This conflict will prohibit the buyer agent from advocating exclusively on your behalf or on the seller's behalf and may limit the level of representation you receive. If the potential for a dual agency arises, the buyer agent shall provide you with a dual agent disclosure. A buyer agent cannot act as a dual agent without your consent and that of the seller. This consent is given by you and the seller signing the dual agent disclosure. If you or the seller declines to give this consent, your opportunity to acquire the seller's property may be lost.

Your buyer agent is obligated to you as follows:

(1) to act solely in the best interests of the buyer to the exclusion of all other interests, including those of the buyer agent;

(2) to obey promptly and efficiently all lawful instructions of the buyer;

(3) to disclose to the buyer all relevant and material information that concerns the real estate transaction and that is known by the buyer agent and not known by the buyer, unless the information is subject to confidentiality arising from a prior or existing agency relationship;

(4) to safeguard the buyer's confidences;

(5) to exercise reasonable skill, care, and diligence in pursuing the buyer's objectives as established in the buyer broker agreement;

(6) to fully account to the buyer for all funds or property of the buyer coming into the buyer agent's possession;

(7) to comply with all applicable federal and state laws, rules, and regulations; and

(8) to carry out the terms of the buyer broker agreement."

(d) Buyer agent disclosure to the seller: "(Name of buyer agent) is representing the buyer with respect to the seller's property located at (address of property). Although the buyer agent is primarily obligated to the buyer, the buyer agent is obligated to you as specified below.

A buyer agent is obligated to a seller as follows:

(1) to disclose to a seller any adverse material facts that concern the ability of the buyer to perform on any purchase offer and that are known to the buyer agent;

(2) to deal in good faith with the seller; and

(3) to comply with all applicable federal and state laws, rules, and regulations.

"Adverse material fact" means a fact that should be recognized by a broker as being of enough significance as to affect a person's decision to enter into a contract to buy or sell real property and may be a fact that materially affects the buyer's ability or intent to perform the buyer's obligations under a proposed or existing contract."

(e) Statutory broker disclosure to the buyer and seller: "(Name of statutory broker) will be involved as a statutory broker with respect to the purchase and sale of real property located at (address). A statutory broker is not the agent of the buyer or seller but is only assisting the parties in executing a sale of the property. A statutory broker is obligated to the buyer and seller as specified below.

A statutory broker is obligated to the parties as follows:

(1) to disclose to a buyer any adverse material fact that concerns the property and that is known to the statutory broker and not known to the buyer. However, the statutory broker is not required to conduct an independent inspection of the property or to verify any representation made by the seller.

(2) to disclose to the seller any adverse material fact that concerns the buyer's intent or ability to perform on the purchase offer and that is known to the statutory broker and not known to the seller;

(3) to exercise reasonable skill, care, and diligence in facilitating the purchase and sale of the property; and

(4) to comply with all applicable federal and state laws, rules, and regulations.

"Adverse material fact" means a fact that should be recognized by a broker as being of enough significance as to affect a person's decision to enter into a contract to buy or sell real property. It may be a fact that materially affects the value or structural integrity or presents a documented health risk to occupants of the property, but may not include the fact that an occupant of the property has or has had a communicable disease or that the property was the site of a suicide or felony, or it may be a fact that materially affects the buyer's ability or intent to perform the buyer's obligations under a proposed or existing contract."

(f) Dual agent disclosure to the buyer and seller: "(Name of dual agent) is the agent of the buyer interested in purchasing the property and of the seller of the property located at (address of property). A dual agent is obligated to the buyer and seller as follows:

(1) to act solely in the best interests of the buyer and seller to the exclusion of all other interests including the dual agent's;

(2) to obey promptly and efficiently all lawful instructions of the buyer and seller;

(3) to disclose to the buyer and seller all relevant and material information that concerns the real estate transaction and that is known by the dual agent and not known by the buyer or seller, unless the information is subject to confidentiality arising from a prior or existing agency relationship;

(4) to exercise reasonable skill, care, and diligence in pursuing the buyer's and seller's objectives as established in the listing agreement and buyer broker agreement;

(5) to fully account to the buyer and seller for all funds or property of the buyer and seller coming into the dual agent's possession;

(6) to comply with all applicable federal and state laws, rules, and regulations;

(7) to carry out the terms of the buyer broker agreement; and

(8) to safeguard the buyer's and seller's confidences, subject to the obligation to disclose to a buyer or a seller any adverse material facts that are known to the dual agent, regardless of any confidentiality considerations. The following may not be disclosed without the written consent of the party to whom the information is confidential:

(a) that the buyer is willing to pay more than the buyer has offered for the property;

(b) that the seller is willing to accept less than the asking price for the property;

(c) factors motivating the buyer to buy or the seller to sell; and

(d) any other information that a party specifically indicates in writing to the dual agent is to be kept confidential and that is not an adverse material fact.

"Adverse material fact" means a fact that should be recognized by a broker as being of enough significance as to affect a person's decision to enter into a contract to buy or sell real property. It may be a fact that materially affects the value or structural integrity or presents a documented health risk to occupants of the property, but may not include the fact that an occupant of the property has or has had a communicable disease or that the property was the site of a suicide or felony, or it may be a fact that materially affects the buyer's ability or intent to perform the buyer's obligations under a proposed or existing contract.

Upon signing this disclosure form, the buyer and seller acknowledge that they understand the obligations owed by a dual agent to them and consent to the dual agent representing them as a dual agent""; inserted (7) setting out form of subsequent disclosure; inserted (8) setting out information permitted in any required disclosure; and made minor changes in style. Amendment effective March 24, 1999.

37-51-315. Vicarious liability. (1) A party to a real estate transaction is not liable for a misrepresentation made by the party's agent or subagent unless:

(a) the party has actual knowledge of the misrepresentation; or

(b) the agent or subagent is repeating a misrepresentation made by the party.

(2) A broker is not liable for a misrepresentation made by the broker's broker associate or subagent unless:

(a) the broker has actual knowledge of the misrepresentation;

(b) a broker associate making the misrepresentation is an employee of the broker and not an independent contractor or subagent; or

(c) a broker associate or subagent is repeating a misrepresentation made by the broker.

(3) An agent is not liable for a misrepresentation made by the principal unless the agent has actual knowledge of the misrepresentation.

History: En. Sec. 5, Ch. 565, L. 1995.

37-51-316 through 37-51-320 reserved.

37-51-321. Revocation or suspension of license — initiation of proceedings — grounds. (1) The board may on its own motion and shall on the sworn complaint in writing of a person investigate the actions of a real estate broker or a real estate salesperson, subject to 37-1-101 and 37-1-121, and may revoke or suspend a license issued under this chapter when the broker or salesperson has been found guilty by a majority of the board of any of the following practices:

(a) intentionally misleading, untruthful, or inaccurate advertising, whether printed or by radio, display, or other nature, which advertising in any material particular or in any material way misrepresents any property, terms, values, policies, or services of the business conducted. A broker who operates under a franchise agreement engages in misleading, untruthful, or inaccurate advertising if in using the franchise name, the broker does not incorporate the broker's own name or the trade name, if any, by which the office is known in the franchise name or logotype. The board may not adopt advertising standards more stringent than those set forth in this subsection.

(b) making any false promises of a character likely to influence, persuade, or induce;

(c) pursuing a continued and flagrant course of misrepresentation or making false promises through agents or salespersons or any medium of advertising or otherwise;

(d) use of the term "realtor" by a person not authorized to do so or using another trade name or insignia of membership in a real estate organization of which the licensee is not a member;

(e) failing to account for or to remit money coming into the broker's or salesperson's possession belonging to others;

(f) accepting, giving, or charging an undisclosed commission, rebate, or profit on expenditures made for a principal;

(g) acting in a dual capacity of broker and undisclosed principal in a transaction, including failing to disclose in advertisements for real property the person's dual capacity as broker and principal;

(h) guaranteeing, authorizing, or permitting a person to guarantee future profits that may result from the resale of real property;

(i) offering real property for sale or lease without the knowledge and consent of the owner or the owner's authorized agent or on terms other than those authorized by the owner or the owner's authorized agent;

(j) inducing a party to a contract of sale or lease to break the contract for the purpose of substituting a new contract with another principal;

(k) accepting employment or compensation for appraising real property contingent on the reporting of a predetermined value or issuing an appraisal report on real property in which the broker or salesperson has an undisclosed interest;

(l) negotiating a sale, exchange, or lease of real property directly with a seller or buyer if the broker or salesperson knows that the seller or buyer has a written, outstanding listing agreement or buyer broker agreement in connection with the property granting an exclusive agency to another broker;

(m) soliciting, selling, or offering for sale real property by conducting lotteries for the purpose of influencing a purchaser or prospective purchaser of real property;

(n) representing or attempting to represent a real estate broker other than the employer without the express knowledge or consent of the employer;

(o) failing voluntarily to furnish a copy of a written instrument to a party executing it at the time of its execution;

(p) paying a commission in connection with a real estate sale or transaction to a person who is not licensed as a real estate broker or real estate salesperson under this chapter;

(q) intentionally violating a rule adopted by the board in the interests of the public and in conformity with this chapter;

(r) failing, if a salesperson, to place, as soon after receipt as is practicably possible, in the custody of the salesperson's registered broker, deposit money or other money entrusted to the salesperson in that capacity by a person;

(s) demonstrating unworthiness or incompetency to act as a broker or salesperson; or

(t) conviction of a felony.

(2) (a) It is unlawful for a broker or salesperson to openly advertise property belonging to others, whether by means of printed material, radio, television, or display or by other means, unless the broker or salesperson has a signed listing agreement from the owner of the property. The listing agreement must be valid as of the date of advertisement.

(b) The provisions of subsection (2)(a) do not prevent a broker or salesperson from including information on properties listed by other brokers or salespersons who will cooperate with the selling broker or salesperson in materials dispensed to prospective customers.

(c) The license of a broker or salesperson who violates this subsection (2) may be suspended or revoked as provided in subsection (1).

History: En. Sec. 14, Ch. 250, L. 1963; amd. Sec. 5, Ch. 261, L. 1969; amd. Sec. 188, Ch. 350, L. 1974; R.C.M. 1947, 66-1937; amd. Sec. 2, Ch. 188, L. 1979; amd. Sec. 1, Ch. 246, L. 1993; amd. Sec. 2, Ch. 565, L. 1995; amd. Sec. 5, Ch. 170, L. 1999.

Compiler's Comments

1999 Amendment: Chapter 170 in (1)(a) near middle of second sentence after "broker's own name" substituted "or" for "in the franchise name or logotype or does not conspicuously display, on the broker's letterhead and other printed materials available to the public, a statement that the broker's office is independently owned and operated and" and at end inserted "in the franchise name or logotype". Amendment effective March 24, 1999.

37-51-322. Repealed. Sec. 128, Ch. 429, L. 1995.

History: En. Sec. 8, Ch. 261, L. 1969; amd. Sec. 189, Ch. 350, L. 1974; R.C.M. 1947, 66-1938.1.

37-51-323. Penalties — criminal — civil. (1) Any individual acting as a broker or salesperson without a license or while his license is suspended or revoked or any person who violates any provision of this chapter shall be guilty of a misdemeanor and upon conviction thereof by a district court of this state shall be punishable by a fine of not less than $100 or more than $500 or by imprisonment for a term not to exceed 90 days, or both. Upon conviction of a second or subsequent violation, the person shall be punishable by a fine of not less than $500 or more than $2,000 or by imprisonment for a term not to exceed 6 months, or both.

(2) In case any person in a civil action is found guilty of having received any money or the equivalent thereof as a fee, commission, compensation, or profit by or in consequence of a violation of any provision of this chapter, he shall in addition be liable to a penalty of not less than the amount of the sum of money so received and not more than three times the sum so received, as may be determined by the court, which penalty may be recovered in any court of competent jurisdiction by any person aggrieved.

History: En. Sec. 17, Ch. 250, L. 1963; amd. Sec. 6, Ch. 261, L. 1969; amd. Sec. 1, Ch. 541, L. 1977; R.C.M. 1947, 66-1940; amd. Sec. 6, Ch. 565, L. 1995.

Part 4

Miscellaneous Provisions

37-51-401. Action for compensation limited to licensed broker or salesperson. Any person engaged in the business of or acting in the capacity of a real estate broker or real estate salesperson within this state shall not be permitted to bring or maintain any action in the courts for the collection of compensation for the sale or lease or otherwise disposing of real estate without first alleging and proving that such person was a duly licensed real estate broker or real estate salesperson or authorized to act as a broker under the provisions of this chapter at the time the alleged cause of action or claim arose.

History: En. Sec. 18, Ch. 250, L. 1963; amd. Sec. 7, Ch. 261, L. 1969; R.C.M. 1947, 66-1941; amd. Sec. 6, Ch. 565, L. 1995.

Part 5

Recovery Account

37-51-501. Real estate recovery account established — minimum balance — interest. (1) There is established in the state special revenue fund for the use of the board a real estate recovery account. The account is used to provide payment of claims based on unsatisfied judgments against persons licensed under the provisions of this chapter. The real estate recovery account is statutorily appropriated as provided in 17-7-502.

(2) The board shall maintain a minimum balance of $100,000 in the account. The board may in its discretion transfer any money in excess of that amount from the account to the state special revenue fund for the use of the board in accordance with the purposes provided in 37-51-204.

(3) Money earned on the investment of funds in the account must be credited to the account annually.

History: En. Sec. 3, Ch. 688, L. 1985.

37-51-502. Initial licensure and additional assessment. (1) A person initially licensed under the provisions of this chapter in 1986 or thereafter shall, in addition to paying any license fee required under this chapter, be assessed the sum of $35 at the time of licensure, to be credited to the real estate recovery account.

(2) If at any time the balance in the real estate recovery account is less than $100,000, every person licensed under this chapter may be assessed a sum, which sum is determined by the board to be sufficient to maintain the balance of the account at a minimum of $100,000.

History: En. Sec. 4, Ch. 688, L. 1985.

37-51-503. Claims against fund — orders for payment. (1) Whenever a person obtains a final judgment in any court of competent jurisdiction against any person licensed under this chapter for the conversion of trust funds or arising directly out of any act or transaction occurring on or after July 1, 1985, for which a license is required under this chapter, he may after executing on such final judgment file an application, in accordance with this section and 37-51-504, with the board for an order directing payment out of the account for any actual and direct loss unpaid on the judgment.

(2) No application or order for payment from the account may be made for:

(a) a judgment which has been satisfied;

(b) any amount in excess of $25,000 for any one licensee, regardless of the number of persons injured by acts of the licensee or number of parcels of real estate involved in the transaction or transactions;

(c) attorney fees and exemplary or punitive damages; or

(d) amounts remaining unpaid on any final judgment entered more than 2 years prior to the date of application.

(3) The application must be:

(a) served by certified mail, return receipt requested, upon the board, the licensee, and any other party to the transaction referred to in the application; and

(b) filed with the board along with an affidavit of service.

History: En. Sec. 5, Ch. 688, L. 1985.

Cross-References

Execution of judgment, Title 25, ch. 13.

Proceedings in aid of execution, Title 25, ch. 14.

37-51-504. Form of application. The person making application for payment from the account must show in the application:

(1) that he is not the spouse of the judgment debtor or the personal representative of such spouse;

(2) that he has obtained a judgment which satisfies the requirements of 37-51-503, stating the amount of the judgment and the amount unpaid on the date of the application;

(3) that he has, on the dates and at the times shown by the applicant, diligently pursued the remedies of execution and proceedings in aid of execution provided in Title 25, chapters 13 and 14, respectively;

(4) the amount of any money obtained as a result of the proceedings required to be shown in subsection (3) and the balance of the judgment remaining unpaid for which application is made; and

(5) that he has diligently pursued his remedies of execution and proceedings in aid of execution against any other person against whom he has a judgment as a result of the transaction for which he seeks recovery from the account.

History: En. Sec. 6, Ch. 688, L. 1985.

37-51-505. Motion to dismiss application. The licensee may request the board at any time to dismiss the application if it appears that the application is without merit. The motion may be supported by the affidavit of any person having knowledge of the facts and may be made on the basis that the application and the judgment referred to therein do not form the basis for a payable claim under 37-51-503 and 37-51-504. The board shall give the applicant at least 10 days' written notice of any motion to dismiss.

History: En. Sec. 7, Ch. 688, L. 1985.

37-51-506. Hearing on application. (1) Within 30 days of the filing of the affidavit of service, the board shall conduct a hearing upon the application. Upon the motion of either party, the board may continue the hearing up to 60 days and upon a showing of good cause may continue the hearing such further period as the board considers appropriate.

(2) At the hearing the board shall determine by a preponderance of the evidence the truth of any allegations made in the application and supporting documents that are challenged by the licensee.

History: En. Sec. 8, Ch. 688, L. 1985.

37-51-507. Payment from account. If the board finds after the hearing that an applicant has proved a valid claim against the account, the board shall enter an order requiring payment from the account of whatever sum it finds to be due under the provisions of this part.

History: **En. Sec. 9, Ch. 688, L. 1985.**

37-51-508. Limitation of payment — pro rata distribution. (1) The liability of the account may not exceed $25,000 for any one licensee until that licensee has repaid the account. If the $25,000 liability of the account is insufficient to pay in full the valid claims of all applications that have been filed against any one licensee and ordered to be paid, the $25,000 must be distributed among those claimants in the ratio that the amount ordered to be paid to any one claimant bears to the total amounts ordered to be paid or in such other manner as the board considers equitable; and upon such a distribution, all claims are considered satisfied by the amount so distributed. Distribution of such money must, at any time, be among the persons ordered to receive the same, without regard to the order or priority in which their respective judgments were obtained or their applications filed.

(2) Upon petition of any person, the board may require all existing applications for payment of claims against one licensee to be joined in one proceeding for the purpose of a timely determination of their respective rights to the money in the account.

(3) An application for payment of a claim against a licensee filed after the distribution of the full amount for which the account is liable for that licensee must be denied by the board.

History: **En. Sec. 10, Ch. 688, L. 1985.**

37-51-509. Claims satisfied in order of filing. If account funds are insufficient to satisfy any claim or portion of a claim ordered to be paid on behalf of a licensee for whom the account liability of $25,000 has not been exceeded, the board shall, when sufficient money has been deposited in the account, satisfy such unpaid claims or portions of them in the order that the applications for such claims were originally filed pursuant to 37-51-503. The board shall pay accumulated interest beginning on the date of the order to pay at the judgment rate on each such unpaid claim.

History: **En. Sec. 11, Ch. 688, L. 1985.**

37-51-510. Deposits by board. Money received by the board under 37-51-511 must be deposited in the account and allocated exclusively for the purposes provided in this part.

History: **En. Sec. 12, Ch. 688, L. 1985.**

37-51-511. Subrogation rights of board. Upon payment of money from the account, the board is subrogated to all of the rights of the judgment creditor to the extent of the amount so paid and the judgment creditor is considered to have assigned to the board all of his right, title, and interest in the judgment to the extent of the amount paid from the account. Any amount and interest recovered by the board on the judgment must be deposited in the account.

History: **En. Sec. 13, Ch. 688, L. 1985.**

37-51-512. Other disciplinary powers unimpaired — effect of repayment to fund. Nothing contained in this part limits the authority of the board to take disciplinary action against any licensee under other provisions of this chapter, nor does the repayment in full of all obligations to the account by any licensee nullify or modify the effect of any other disciplinary action taken by the board under the provisions of this chapter.

History: **En. Sec. 14, Ch. 688, L. 1985.**

Part 6
Licensure of Property Managers

Part Cross-References

Landlord-tenant laws, Title 70, ch. 24 through 26.

37-51-601. License required to manage property. It is unlawful for a person to engage in or conduct business, directly or indirectly, or to advertise as a property manager within this state without having met the qualifications for licensure as a property manager and having been granted a license by the board.

History: **En. Sec. 2, Ch. 142, L. 1993.**

37-51-602. Definition of property management — exemptions from application. (1) An act performed for compensation of any kind in the leasing, renting, subleasing, or other transfer of possession of real estate owned by another without transfer of the title to the real estate, except as specified in this section, constitutes the practice of property management. The provisions of this chapter do not apply to:

(a) a relative of the owner of the real estate, defined as follows:

(i) a son or daughter of the property owner or a descendant of either;

(ii) a stepson or stepdaughter of the property owner;

(iii) a brother, sister, stepbrother, or stepsister of the property owner;

(iv) the father or mother of the property owner or the ancestor of either;

(v) a stepfather or stepmother of the property owner;

(vi) a son or daughter of a brother or sister of the property owner;

(vii) a brother or sister of the father or mother of the property owner;

(viii) a son-in-law, daughter-in-law, father-in-law, mother-in-law, brother-in-law, or sister-in-law of the property owner; or

(ix) the spouse of the property owner;

(b) a person who leases no more than four residential real estate units;

(c) a person acting as attorney-in-fact under a power of attorney from the owner of real estate who authorizes the final consummation of any contract for the renting or leasing of the real estate. This exemption is meant to exclude a single or irregular transaction and may not be routinely used to escape the necessity of obtaining a license.

(d) an attorney at law in the performance of duties as an attorney;

(e) a receiver, trustee in bankruptcy, personal representative, person acting in regard to real estate pursuant to a court order, or a trustee under a trust agreement, deed of trust, or will;

(f) an officer of the state or any of its political subdivisions in the conduct of official duties;

(g) a person acting as a manager of a housing complex for low-income individuals subsidized either directly or indirectly by the state, any agency or political subdivision of the state, or the government or an agency of the United States;

(h) a person who receives compensation from the owner of the real estate in the form of reduced rent or salary, unless that person holds signatory authority on the account in which revenue from the real estate is deposited or disbursed;

(i) a person employed by the owner of the real estate if that person's property management duties are incidental to the person's other employment-related duties; or

(j) a person employed on a salaried basis by only one person.

(2) A licensed real estate broker on active status or a licensed real estate salesperson on active status and acting under the supervision of a real estate broker may act as a property manager without meeting any qualifications in addition to those required for licensure as a real estate broker or real estate salesperson.

History: En. Sec. 3, Ch. 142, L. 1993; amd. Sec. 6, Ch. 565, L. 1995.

37-51-603. Qualification of property manager applicants — examination — form of licenses. (1) The board by rule shall require an applicant for licensure to provide information that the board believes is necessary to ensure that a person granted a property manager license is of good repute and competent to transact the business of a property manager in a manner that safeguards the welfare and safety of the public.

(2) (a) The board shall require an applicant for a property manager license to:

(i) apply for licensure to the department;

(ii) furnish written evidence that the applicant has completed the number of classroom hours that the board determines appropriate in a course of study approved by the board and taught by instructors approved by the board; and

(iii) satisfactorily complete an examination dealing with the material taught in the course of study.

(b) The course of study must include the subjects of real estate leasing principles, real estate leasing law, and related topics.

(3) Examinations must be given at least once every 4 months at places within the state that the board prescribes. The board shall establish by rule the contents of and requirements to pass the examination.

(4) An applicant for licensure as a property manager must be at least 18 years of age and must have graduated from an accredited high school or completed an equivalent education as determined by the board.

(5) The board shall prescribe the form of the license, and the license must bear the seal of the board. A property manager shall display the license conspicuously in the property manager's place of business.

(6) The department shall prepare and deliver to the licensee a pocket card in a form and at times prescribed by the board.

History: En. Sec. 4, Ch. 142, L. 1993; amd. Sec. 46, Ch. 492, L. 1997.

37-51-604. Repealed. Sec. 128, Ch. 429, L. 1995.

History: En. Sec. 5, Ch. 142, L. 1993.

37-51-605. Property manager's office — notice of change of address. A property manager shall maintain a fixed office in this state at which the original license of the property manager must be prominently displayed. The office manager must be designated on the license. If the property manager changes the location of the office, the property manager shall notify the department of the new address within 10 days after the change of address.

History: En. Sec. 6, Ch. 142, L. 1993.

37-51-606. Repealed. Sec. 128, Ch. 429, L. 1995.

History: En. Sec. 7, Ch. 142, L. 1993.

37-51-607. Transactions with nonlicensed persons unlawful — action for compensation limited to licensees. (1) It is unlawful for a licensed property manager to employ or compensate, directly or indirectly, a person who is not a licensed property manager for performing the acts regulated by this part.

(2) An action may not be brought or maintained in the courts for the collection of compensation for the lease of real estate unless the plaintiff first alleges that the plaintiff was licensed or was authorized to act without a license at the time the alleged cause of action or claim arose.

History: En. Sec. 8, Ch. 142, L. 1993.

37-51-608. Penalties — criminal — civil. (1) A person who acts without a license or while a license is suspended or revoked or who violates any provision of this part is guilty of a misdemeanor. For a first conviction, the person shall be punished by a fine of not less than $100 or more than $500 or by imprisonment for a term not to exceed 90 days, or both. Upon conviction of a second or subsequent offense, the person shall be punished by a fine of not less than $500 or more than $2,000 or by imprisonment for a term not to exceed 6 months, or both.

(2) If a person is determined in a civil action to have received any money or the equivalent as a fee, commission, or other compensation while violating the provisions of this part, the person is also liable for a penalty of not less than the amount received and not more than three times the amount received, as the court may determine.

History: En. Sec. 9, Ch. 142, L. 1993.

CHAPTER 52

TITLE ABSTRACTERS

(Repealed. Sec. 195, Ch. 575, L. 1981)

Chapter Compiler's Comments

Histories of Repealed Sections:

37-52-101. En. 66-2101.1 by Sec. 193, Ch. 350, L. 1974; R.C.M. 1947, 66-2101.1.

37-52-102. En. Secs. 17, 18, Ch. 105, L. 1931; re-en. Secs. 4139.17, 4139.18, R.C.M. 1935; R.C.M. 1947, 66-2117(part), 66-2118.

37-52-201. En. Sec. 3, Ch. 105, L. 1931; re-en. Sec. 4139.3, R.C.M. 1935; amd. Sec. 195, Ch. 350, L. 1974; R.C.M. 1947, 66-2103.

37-52-202. En. Sec. 4, Ch. 105, L. 1931; re-en. Sec. 4139.4, R.C.M. 1935; amd. Sec. 124, Ch. 147, L. 1963; amd. Sec. 196, Ch. 350, L. 1974; amd. Sec. 1, Ch. 214, L. 1975; amd. Sec. 37, Ch. 439, L. 1975; amd. Sec. 17, Ch. 101, L. 1977; R.C.M. 1947, 66-2104(2)(1).

37-52-203. En. Sec. 5, Ch. 105, L. 1931; re-en. Sec. 4139.5, R.C.M. 1935; amd. Sec. 197, Ch. 350, L. 1974; R.C.M. 1947, 66-2105.

37-52-301. En. Sec. 1, Ch. 105, L. 1931; re-en. Sec. 4139.1, R.C.M. 1935; R.C.M. 1947, 66-2101.

37-52-302. En. Sec. 8, Ch. 105, L. 1931; re-en. Sec. 4139.8, R.C.M. 1935; amd. Sec. 198, Ch. 350, L. 1974; amd. Sec. 4, Ch. 215, L. 1975; R.C.M. 1947, 66-2108.

37-52-303. En. Sec. 10, Ch. 105, L. 1931; re-en. Sec. 4139.10, R.C.M. 1935; amd. Sec. 199, Ch. 350, L. 1974; amd. Sec. 5, Ch. 215, L. 1975; R.C.M. 1947, 66-2110.

37-52-304. En. Sec. 11, Ch. 105, L. 1931; re-en. Sec. 4139.11, R.C.M. 1935; amd.

Sec. 200, Ch. 350, L. 1974; amd. Sec. 6, Ch. 215, L. 1975; R.C.M. 1947, 66-2111.

37-52-305. En. Sec. 4, Ch. 105, L. 1931; re-en. Sec. 4139.4, R.C.M. 1935; amd. Sec. 124, Ch. 147, L. 1963; amd. Sec. 196, Ch. 350, L. 1974; amd. Sec. 1, Ch. 214, L. 1975; amd. Sec. 37, Ch. 439, L. 1975; amd. Sec. 17, Ch. 101, L. 1977; R.C.M. 1947, 66-2104(2)(2).

37-52-306. En. Sec. 14, Ch. 105, L. 1931; re-en. Sec. 4139.14, R.C.M. 1935; amd. Sec. 202, Ch. 350, L. 1974; R.C.M. 1947, 66-2114.

37-52-307 through 37-52-310 reserved.

37-52-311. En. Sec. 15, Ch. 105, L. 1931; re-en. Sec. 4139.15, R.C.M. 1935; amd. Sec. 203, Ch. 350, L. 1974; amd. Sec. 2, Ch. 541, L. 1977; R.C.M. 1947, 66-2115.

37-52-312. En. Sec. 17, Ch. 105, L. 1931; re-en. Sec. 4139.17, R.C.M. 1935; R.C.M. 1947, 66-2117(part).

37-52-401. En. Sec. 16, Ch. 105, L. 1931; re-en. Sec. 4139.16, R.C.M. 1935; R.C.M. 1947, 66-2116.

37-52-402. En. Sec. 3, Ch. 43, L. 1915; re-en. Sec. 4141, R.C.M. 1921; R.C.M. 1947, 66-2119.

CHAPTER 53

TIMESHARE SALES

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Chapter Cross-References

Unit Ownership Act — condominiums, Title 70, ch. 23.

Part 1
General

37-53-101. Short title. This chapter may be cited as the "Montana Timeshare Act".

History: En. Sec. 1, Ch. 444, L. 1987.

37-53-102. Definitions. As used in this chapter, unless the context requires otherwise, the following definitions apply:

(1) "Advertisement" means a written, printed, audio, or visual communication that is published in whole or in part to sell, offer to sell, or solicit an offer for a timeshare.

(2) "Affiliate" means a person who controls, is controlled by, or is under the control of a developer.

(3) "Association" or "owners' association" means the association of owners created by the timeshare instruments for purposes of managing and maintaining the project for the benefit of all timeshare owners.

(4) "Board" means the board of realty regulation provided for in 2-15-1867.

(5) "Developer" means:

(a) a person creating timeshares or engaged in the business of selling his own timeshares;

(b) a person who controls, is controlled by, or is in common control with the person engaged in creating or selling timeshares; or

(c) any successor or assignee of a person referred to in subsection (5)(a) or (5)(b).

(6) "Managing entity" means a person hired by the timeshare association or developer to manage the timeshare plan or the timeshare property.

(7) "Offer" or "offering" means an inducement, solicitation, or attempt to encourage a person to acquire a timeshare. An offer is made in this state if the offer originates in this state or if the principal timeshare property is located in this state.

(8) "Person" means a natural person, corporation, business trust, estate, trust, partnership, association, joint venture, or other legal or commercial entity.

(9) "Prize and gift promotional offer" means advertising material stating that a prospective purchaser may receive goods or services other than the timeshare plan itself, either free or at a discount, including but not limited to the use of a prize, gift, award, premium, or lodging or vacation certificate.

(10) "Project" means the real property or real estate, that must contain more than one unit, in which timeshares are created by a single instrument or set of instruments.

(11) "Promoter" means any person who initiates the inducement, solicitation, or encouragement of another person, by any means, of the review or acquisition of a timeshare interval.

(12) "Purchaser" means a person, other than a developer, who by means of a voluntary transfer acquires a legal or equitable interest in a timeshare, other than as security for an obligation.

(13) "Real estate" means real estate as defined in 37-51-102.

(14) "Sale" or "sell" includes each contract of sale of, contract to sell, or disposition of a timeshare for value.

(15) "Timeshare broker" means a natural person who supervises a timeshare sales operation and one or more timeshare salespersons.

(16) "Timeshare expenses" means expenditures, fees, charges, or liabilities:

(a) incurred with respect to the timeshares by or on behalf of all timeshare owners in one timeshare property; and

(b) imposed on the timeshare by the entity governing a project of which the timeshare is a part, together with any allocations to reserve. The term does not include purchase money payable for timeshares.

(17) "Timeshare instrument" means one or more documents, by whatever name denominated, creating or regulating timeshares.

(18) "Timeshare interval" or "timeshare interest" means the right, however evidenced or documented, to use and occupy one or more timeshare units on a periodic basis according to an arrangement allocating such use and occupancy rights between similar users.

(19) "Timeshare owner" means a person, other than a developer, who is an owner or co-owner of a timeshare. If title to a timeshare is held in trust, timeshare owner means the beneficiary of the trust.

(20) "Timeshare salesperson" means a person who for a salary, commission, or compensation of any kind is associated, either directly or indirectly, regularly or occasionally, with a timeshare broker to sell, purchase, or negotiate for sale, purchase, lease, or exchange of the timeshare interests in real estate and who, on behalf of a developer, sells or offers to sell a timeshare to a purchaser.

(21) "Timeshare unit" or "unit" means the real property or portion thereof in which the timeshare exists and that is designated for separate use, including campgrounds, campsites, and outdoor recreation sites with spaces designed or promoted for the purpose of locating a trailer, tent, tent trailer, camper, or similar device for land-based portable housing.

History: En. Sec. 2, Ch. 444, L. 1987.

37-53-103. Fees. (1) The board shall charge and collect fees fixed by this section. All fees collected under this chapter must be deposited into the state special revenue fund for the use of the board and are not refundable except as provided in this chapter.

(2) The initial fee for filing an application for registration for sale of a timeshare is $500. Any filing containing over 400 intervals must be accompanied by a fee of $5 for each additional interval.

(3) A fee for amendment of registration for the purpose of adding additional intervals during a registration period is $200 plus $5 for each interval in excess of 50 added by such amendment.

(4) The fee for an application for renewal of registration is $200.

(5) The fee for an initial application for or renewal of a license as a timeshare salesperson is $15.

(6) The fee for an initial application for or renewal of a license as a timeshare broker is $35.

(7) The fee for an amendment of registration, other than the addition of units, as required in 37-53-203(3), is $200.

History: En. Sec. 29, Ch. 444, L. 1987.

37-53-104. Rulemaking authority. The board shall adopt rules to carry out the provisions of this chapter. The rules may include but are not limited to:

(1) format of forms for applications and renewal of registration and prescribing any additional information to be supplied;

(2) documents acceptable in lieu of registration documents under 37-53-204;

(3) conditions that may be placed upon registration under 37-53-212;

(4) the subject matter of the examination or continuing education requirement for license as a timeshare salesperson or timeshare broker; and

(5) additional information included in a disclosure document.

History: En. Sec. 30, Ch. 444, L. 1987.

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

Part 2

Registration of Timeshare Offerings

37-53-201. Registration of timeshare offering required. A timeshare offering may not be advertised, offered, or sold in this state unless it is registered as provided in this chapter.

History: En. Sec. 3, Ch. 444, L. 1987.

37-53-202. Application for registration. An application for registration of a timeshare offering must be in a form developed by the board in conjunction with input from the timeshare industry. The application must be signed by the applicant and accompanied by the registration fee. Except as provided in 37-53-204, the application must contain:

(1) audited financial statements showing the financial condition of the developer and any affiliate, including:

(a) a balance sheet dated within 4 months before the filing of the application for registration; and

(b) statements of income, shareholders' equity, and material changes in financial position as of the end of the prior fiscal year and for any period between the end of the prior fiscal year and the date of the last balance sheet;

(2) a projected budget for the timeshare project for 2 years after the offering being made, including but not limited to source of revenues and

expenses of construction, development, management, maintenance, advertisement, operating reserves, interest, and any other necessary reserves;

(3) a description of the background of the developer for the previous 10 years, including information about the business experience of the developer and any relevant criminal convictions, civil lawsuits, or administrative actions related to any offering during that period;

(4) a statement disclosing any fees in excess of the stated price per unit to be charged to the purchasers, a description of their purpose, and the method of calculation;

(5) a statement disclosing when and where the developer or an affiliate has previously sold timeshares;

(6) a statement of any liens, defects, or encumbrances on or affecting the title to the timeshare units;

(7) copies of all timeshare instruments;

(8) a copy of the disclosure document provided for in 37-53-303, signed by the applicant;

(9) an irrevocable consent to service of process signed by the applicant; and

(10) any other information that the board may by rule require in the protection of the public interest or necessary to describe the risks involved.

History: En. Sec. 4, Ch. 444, L. 1987; amd. Sec. 1, Ch. 12, L. 1993.

37-53-203. Registration period — renewal. (1) A timeshare offering registration is effective for 1 year from the date of approval of the registration application.

(2) Registration of a timeshare offering may be renewed for an additional 1-year period by filing a renewal application with the board no later than 30 days before the expiration of the registration period and paying the prescribed fee. A renewal application must contain any information the board requires to indicate any substantial changes in the information contained in the original application.

(3) If a materially adverse change in the condition of the developer or an affiliate occurs during any year, an amendment to the documents filed under 37-53-202 must be filed, along with the prescribed fee.

History: En. Sec. 5, Ch. 444, L. 1987.

37-53-204. Alternative filing documents. (1) In lieu of the documents required to be filed with an application under 37-53-202, the board may accept:

(a) a disclosure document filed with an agency of the United States or any other state; or

(b) a disclosure document compiled in accordance with a rule of an agency of the United States or any other state.

(2) The board shall prescribe by rule those documents acceptable under subsection (1).

History: En. Sec. 6, Ch. 444, L. 1987.

37-53-205. Exemption from registration. The registration requirements of this chapter do not apply to:

(1) an offer, sale, or transfer of not more than two timeshare interests by a timeshare owner in a 12-month period;

(2) a gratuitous transfer of a timeshare;

(3) a sale under court order;
(4) a sale by any government or a governmental agency;
(5) a sale by forfeiture, foreclosure, or deed in lieu of foreclosure; or
(6) a sale of a project or all timeshare units therein to any one purchaser.

History: **En. Sec. 7, Ch. 444, L. 1987.**

37-53-206 through 37-53-210 reserved.

37-53-211. Approval or disapproval of application or registration. (1) Registration of a timeshare offering is effective upon written notice of approval of the application by the board or upon the passage of 30 calendar days after filing of a completed application if not approved or denied prior to that time.

(2) The board may issue an order denying, suspending, or revoking any application or registration if the board finds that the order is in the public interest and that:

(a) the application or registration is incomplete or contains a statement that is false or misleading with respect to any material fact;

(b) any provision of this chapter or any rule or order lawfully issued under this chapter has been violated;

(c) the activities of the developer include or would include activities that are illegal; or

(d) the timeshare offering has worked or would tend to work a fraud on purchasers.

(3) The board shall promptly notify the applicant or registrant of any order denying, suspending, or revoking registration and of the applicant's or registrant's right to request a hearing within 20 days of receipt of notification. If the applicant or registrant does not request a hearing, the order remains in effect until the board modifies or vacates it.

History: **En. Sec. 8, Ch. 444, L. 1987; amd. Sec. 107, Ch. 429, L. 1995.**

37-53-212. Conditions upon registration. To protect the public interest, the board may require as a condition of registration that the registrant establish an independent trust, escrow, or similar arrangement that assures a purchaser quiet enjoyment of the timeshare unit.

History: **En. Sec. 9, Ch. 444, L. 1987.**

Cross-References

Trust Code, Title 72, ch. 33 through 36.

37-53-213. Waiver of liability. The fact that an application for registration has been filed or that a timeshare offering has been registered does not constitute a finding by the board that any document filed under this chapter is complete, true, and not misleading. The filing or registration does not mean that the board has given approval to, recommended, or determined the merits or qualifications of any person, timeshare, or transaction.

History: **En. Sec. 10, Ch. 444, L. 1987.**

37-53-214. Approval of advertising. (1) No person may publish an advertisement in this state offering a timeshare that is subject to the registration requirements of 37-53-201 unless a true copy of the advertisement has first been filed in the office of the board at least 7 days before publication or such other period as the board may establish by rule.

(2) Nothing in this chapter applies to any radio or television station or any publisher, printer, or distributor of any newspaper, magazine, billboard, or other advertising medium that accepts advertising in good faith without reasonable knowledge of its violation of any provision of this chapter.

History: **En. Sec. 11, Ch. 444, L. 1987.**

Part 3

Licensure of Brokers and Salespersons

37-53-301. Licensure of timeshare brokers and timeshare salespersons. (1) (a) A person offering timeshare units for his own account or for the account of others must be licensed as a timeshare salesperson or timeshare broker unless the offering is exempt under 37-53-205. Licensure may be obtained:

(i) upon completion of an application and personal disclosure statement and passage of an examination prescribed by the board demonstrating knowledge of the timeshare industry and this chapter; and

(ii) upon successful completion of a course of education related to the timeshare industry that has been approved by the board.

(b) The board shall then issue a certificate of completion to the applicant.

(2) A person licensed as a real estate broker or salesperson under Title 37, chapter 51, may act as a timeshare salesperson or timeshare broker upon successful completion of a course of education related to the timeshare industry that has been approved by the board. The board shall then issue a certificate of completion to the applicant. No license other than that issued pursuant to Title 37, chapter 51, is required.

History: **En. Sec. 12, Ch. 444, L. 1987.**

37-53-302. Denial, suspension, or revocation of license or application. The board may by an order deny, suspend, or revoke a timeshare salesperson's or timeshare broker's license or application for license if the board finds that the order is in the public interest and that the applicant or licensee:

(1) has filed an application for licensure and personal disclosure statement as a timeshare salesperson or timeshare broker that is incomplete in any material respect or contains any statement that is, in the light of the circumstances under which it was made, false or misleading with respect to any material fact;

(2) has violated or failed to comply with any provision of this chapter, rules adopted under this chapter, or Title 37, chapter 51;

(3) has been convicted of a felony involving theft, fraud, or any consumer protection statute or a felony involving moral turpitude and related to the occupation of timeshare salesperson or timeshare broker;

(4) is permanently or temporarily enjoined by a court from engaging in or continuing any conduct or practice involving an aspect of the timeshare business;

(5) has engaged in dishonest or unethical practices in the timeshare business; or

(6) has not complied with any condition imposed by the board or is not qualified on the basis of knowledge of the timeshare industry or this chapter.

History: **En. Sec. 13, Ch. 444, L. 1987; amd. Sec. 108, Ch. 429, L. 1995.**

Cross-References

Unfair trade practices and consumer protection, Title 30, ch. 14.

37-53-303. Disclosure document. A person who offers or sells a timeshare shall provide the prospective purchaser with a written disclosure document before the prospective purchaser signs an agreement for the purchase of a timeshare. The disclosure document must include:

(1) the official name and address of the developer, its parent or affiliates, and the names and addresses of the director and officers of each;

(2) the location of the timeshare property;

(3) a general description of the timeshare property and the timeshare units;

(4) a list of all units offered by the promoter in the same project, including:

(a) the types, current prices, and number of units;

(b) the types and durations of the timeshares;

(c) the maximum number of units that may become part of the timeshare property;

(d) a statement of the maximum number of timeshares that may be created or a statement that there is no maximum;

(5) a description of the types of financing offered by the promoter;

(6) a statement of ownership of all properties included in the timeshare offering, including any liens or encumbrances affecting the property;

(7) copies of any agreements or leases to be signed by purchasers at closing and a copy of the timeshare instrument;

(8) the identity of the managing entity and the name, address, and telephone number of the person or persons in charge, and the manner, if any, whereby the developer may change the managing entity;

(9) a true copy of the current or projected budget of the owners' association along with a description of the nature and purpose of all charges, dues, maintenance fees, and other expenses that may be assessed, including the formula for payment of charges if all timeshares are not sold and a statement of who pays additional costs;

(10) a statement in boldface type on the cover page of the disclosure document that, within 3 days after receipt of a disclosure document or the signing of the timeshare purchase agreement, whichever is later, a purchaser may cancel any agreement for the purchase of a timeshare from a developer or salesperson and that the cancellation must be in writing and be delivered either in person or by certified mail to the developer or the developer's agent;

(11) any restrictions on transfers of a timeshare or portion thereof;

(12) a description of any insurance coverage provided for the benefit of timeshare owners by the managing entity or the timeshare owners' association;

(13) a full and accurate disclosure of whether the timeshare owners are permitted or required to become members of or participate in any program for the exchange of property rights among themselves or with the timeshare owners of other timeshare units, or both, and a complete description of the program; and

(14) any additional information the board finds necessary to fully inform prospective purchasers, including but not limited to the financial and background information required by 37-53-202.

History: En. Sec. 14, Ch. 444, L. 1987.

37-53-304. Disclosure to purchaser — cancellation of agreement. The developer or any person offering a timeshare shall provide a prospective purchaser with a copy of the disclosure document described in 37-53-303 before the execution of any agreement for the purchase of a timeshare. A purchaser may, within 3 days following receipt of a disclosure document or signing of a timeshare purchase agreement, whichever is later, cancel the agreement and receive a refund of any consideration paid by providing written notice of the cancellation to the promoter or promoter's agent either by certified mail or personal delivery. If the purchaser does not receive the disclosure document, the agreement is voidable by the purchaser until the purchaser receives the document and for 3 days thereafter. The provisions of this section may not be waived.

History: **En. Sec. 15, Ch. 444, L. 1987.**

37-53-305. Transfer of developer's interest. A developer may not sell, lease, assign, or otherwise transfer his interest in a project unless the transferee agrees in writing to honor the purchaser's right to use and occupy the timeshare unit, to honor the purchaser's right to cancel, and to comply with this chapter. Each purchaser whose contract may be affected must be given written notice of a transfer immediately after the transfer is made.

History: **En. Sec. 16, Ch. 444, L. 1987.**

37-53-306. Good faith requirement — prohibited provisions. (1) The parties to a timeshare agreement shall deal with each other in good faith.

(2) A developer may not require a purchaser to agree to a release, assignment, novation, waiver, or any other provision that relieves a person from a duty imposed by this chapter.

(3) Any provision in a timeshare instrument that designates jurisdiction or venue in a forum outside this state or the state or other jurisdiction where the project is located is void with respect to any cause of action that is enforceable in this state.

History: **En. Sec. 17, Ch. 444, L. 1987.**

37-53-307. Illegal practices. (1) It is unlawful for any person in connection with the offer, sale, or lease of a timeshare interest in this state to:

(a) make any false or misleading statement of a material fact or to omit a material fact;

(b) employ any device, scheme, or artifice to defraud;

(c) engage in any act, practice, or course of business that operates or would operate as a fraud or deceit upon any person;

(d) file or cause to be filed with the board any document that contains false or misleading information; or

(e) violate any provision of this chapter or a rule adopted under this chapter or any applicable provision of Title 37, chapter 51.

(2) A violation of this section is a misdemeanor punishable as provided in 46-18-212.

History: **En. Sec. 18, Ch. 444, L. 1987.**

Cross-References

Fraud defined, 28-2-404 through 28-2-406.

Unfair trade practices and consumer protection, Title 30, ch. 14.

37-53-308. Civil liability. Any person who offers, sells, or materially aids in the offer or sale of a timeshare in violation of this chapter is liable to the person buying the timeshare, who may sue to recover the consideration paid for the timeshare, together with interest at the current legal rate from date of payment and costs, upon the tender of the timeshare or for damages if the person no longer owns the timeshare.

History: En. Sec. 19, Ch. 444, L. 1987.

Cross-References

Legal interest, 31-1-106.

Part 4
Promotional Offers

Part Cross-References

Consumer protection — unlawful practices, 30-14-103.

Unfair competition and deception, 30-14-104.

37-53-401. Prize and gift promotional offers — filing. (1) A separate filing for each prize and gift promotional offer to be used in the sale of timeshare intervals must be made with the board at least 14 days prior to the use of such offer by the developer. No advertising material related to a prize and gift promotional offer may be distributed unless it is first filed with the board. If the board determines that any prize or gift has been misrepresented by the developer and if upon notification thereof the developer fails to correct such misrepresentation, the board may revoke or suspend the application or registration of the developer.

(2) Each filing of a prize and gift promotional offer with the board must include, when applicable:

(a) a copy of all advertising material to be used in connection with the prize and gift promotional offer;

(b) the name, address, and telephone number, including area code, of the supplier or manufacturer from whom each prize, gift, or other item is obtained;

(c) the manufacturer's model number or other description of such item;

(d) the information on which the developer relies in determining the verifiable retail value;

(e) the name, address, and telephone number, including area code, of the promotional entity responsible for overseeing and operating the prize and gift promotional offer; and

(f) the name and address of the registered agent in the state of the promotional entity for service of process purposes.

(3) Each developer shall file with the board by March 1 of each year the name, address, and telephone number, including area code, of each person who actually received a prize, gift, or other item that had a verifiable retail value or manufacturer's suggested retail price in excess of $150.

History: En. Sec. 20, Ch. 444, L. 1987.

37-53-402. Prize and gift promotional offer advertising content. All advertising material to be distributed in connection with a prize and gift promotional offer must contain:

(1) a description of the prize, gift, or other item that the prospective purchaser will actually receive, including the manufacturer's retail price or, if none is available, the verifiable retail value;

(2) all rules, terms, requirements, and preconditions that must be fulfilled or met before a prospective purchaser may claim any prize, gift, or other item involved in the prize and gift promotional plan, including whether the prospective purchaser is required to attend a sales presentation in order to receive the prize, gift, or other item;

(3) the date the offer expires;

(4) a statement of the number of items that will be awarded if the number of prizes, gifts, or other items to be awarded is limited; and

(5) the method by which prizes, gifts, or other items are to be awarded.

History: En. Sec. 21, Ch. 444, L. 1987.

37-53-403. Awarding of gifts and prizes. (1) Any prize, gift, or other item offered pursuant to a prize and gift promotional offer must be delivered to the prospective purchaser on the day he appears to claim it, whether or not he purchases a timeshare interval. If the prize is not available it must be presented or mailed at the developer's expense, postage prepaid, within 30 days thereafter.

(2) All prizes, gifts, or other items represented by the developer to be awarded in connection with any prize and gift promotional offer must be awarded by the date referenced in the advertising material used in connection with such offer.

History: En. Sec. 22, Ch. 444, L. 1987.

Part 5

Enforcement

37-53-501. Repealed. Sec. 128, Ch. 429, L. 1995.

History: En. Sec. 23, Ch. 444, L. 1987.

37-53-502. Repealed. Sec. 128, Ch. 429, L. 1995.

History: En. Sec. 24, Ch. 444, L. 1987.

37-53-503. Repealed. Sec. 128, Ch. 429, L. 1995.

History: En. Sec. 25, Ch. 444, L. 1987.

37-53-504. Attorney general to act as attorney for board. The attorney general shall act as attorney for the board in actions and proceedings brought by or against it under this chapter. Fees and expenses of the attorney general acting in this capacity must be paid out of board money in the state special revenue fund.

History: En. Sec. 26, Ch. 444, L. 1987.

37-53-505. Injunctions. (1) The attorney general, in the name of the state or the board, may bring an action to enjoin a person from violating a provision of this chapter. Upon a proper showing, the district court shall grant a permanent or temporary injunction, restraining order, or writ of mandamus. The court may make any additional order of judgment necessary to restore to a person any interest in money or property, real or personal, that may have been acquired by an act prohibited or declared to be unlawful under this chapter. The prevailing party may recover costs of the action, including a reasonable attorney fee.

(2) The district court issuing an injunction shall retain jurisdiction. A person who violates the terms of an injunction shall pay a civil penalty as set by the court, but not to exceed $25,000.

(3) The attorney general, in the name of the state or the board, may apply to the district court to appoint a receiver or conservator for any person or the assets of any person who is subject to a cease and desist order, permanent or temporary injunction, restraining order, or writ of mandamus.

History: En. Sec. 27, Ch. 444, L. 1987.

Cross-References

Injunctions, Rule 65, M.R.Civ.P. (see Title 25, ch. 20); Title 27, ch. 19.

37-53-506. Criminal proceedings. The board may refer evidence concerning violations of this chapter to the attorney general or the proper prosecuting attorney, who may institute appropriate criminal proceedings.

History: En. Sec. 28, Ch. 444, L. 1987.

CHAPTER 54

REAL ESTATE APPRAISERS

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Chapter Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

Appraisal — property taxation, Title 15, ch. 7.

Part 1
General

37-54-101. Short title. This chapter may be cited as the "Real Estate Appraiser Licensing and Certification Act".

History: En. Sec. 1, Ch. 409, L. 1991.

37-54-102. Definitions. Terms commonly used in appraisal practice and as used in this chapter must be defined according to the Uniform Standards of Appraisal Practice, as issued by the appraisal foundation. As used in this chapter, unless the context requires otherwise, the following definitions apply:

(1) "Appraisal foundation" means the appraisal foundation incorporated as an Illinois not-for-profit corporation on November 30, 1987, pursuant to Title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, 12 U.S.C. 3310, et seq. The purposes of the appraisal foundation are to:

(a) establish and improve uniform appraisal standards by defining, issuing, and promoting those standards;

(b) establish appropriate criteria for the licensure and certification of qualified appraisers by defining, issuing, and promoting qualification criteria and disseminate the qualification criteria to states and other governmental entities; and

(c) develop or assist in the development of appropriate examinations for qualified appraisers.

(2) "Board" means the board of real estate appraisers provided for in 2-15-1868.

(3) "Certified real estate appraiser" means a person who develops and communicates real estate appraisals and who has a valid real estate appraisal certificate issued under 37-54-305.

(4) "Department" means the department of commerce provided for in 2-15-1801.

(5) "Licensed real estate appraiser" means a person who holds a current valid real estate appraiser license issued under 37-54-201.

History: En. Sec. 2, Ch. 409, L. 1991; amd. Sec. 27, Ch. 481, L. 1997.

37-54-103 and 37-54-104 reserved.

37-54-105. Powers and duties of board. The board shall:

(1) adopt rules to implement and administer the provisions of this chapter;

(2) establish and collect fees commensurate with the costs of licensure and certification and renewal of a license or certificate;

(3) establish minimum requirements for education, experience, and examination for licensure and certification as set out by the appraisal qualification board of the appraisal foundation;

(4) receive applications for examination from qualified applicants, prescribe and administer examinations to qualified applicants, and determine the acceptable level of performance on examinations;

(5) receive and review applications for licensure and certification and issue licenses and certificates;

(6) review periodically the standards for development and communication of appraisals and adopt rules explaining and interpreting the standards;

(7) retain all applications and other records submitted to it;

(8) adopt by rule standards of professional appraisal practice in this state;

(9) reprimand, suspend, revoke, or refuse to renew the license or certificate of a person who has violated the standards established for licensed and certified real estate appraisers; and

(10) perform other duties necessary to implement this chapter.

History: En. Sec. 4, Ch. 409, L. 1991; amd. Sec. 109, Ch. 429, L. 1995; amd. Sec. 28, Ch. 481, L. 1997.

37-54-106 through 37-54-109 reserved.

37-54-110. Roster of licensed and certified real estate appraisers. The board shall prepare and issue at least once each calendar year a roster listing the name and principal place of business of each real estate appraiser currently licensed or certified under this chapter. A member of the public may obtain a copy of the roster by applying to the board. The board may set a reasonable fee for the cost of providing the roster.

History: En. Sec. 26, Ch. 409, L. 1991.

37-54-111. Certificate of good standing. The board may issue a certificate of good standing to any licensed or certified real estate appraiser who holds a current valid license or certificate in this state.

History: En. Sec. 27, Ch. 409, L. 1991.

37-54-112. Deposit of fees. Fees collected by the board under this chapter must be deposited in the state special revenue fund for the use of the board, subject to 37-1-101(6), and may be used to pay the compensation of board members and other expenses necessary to administer this chapter.

History: En. Sec. 22, Ch. 409, L. 1991.

Part 2
Licensure

37-54-201. Real estate appraiser license — scope and display of license. (1) Upon proof that an applicant meets the qualifications set out in 37-54-202 and upon payment of license fees adopted under 37-54-105, the board shall issue to the applicant a real estate appraiser license.

(2) The term "licensed real estate appraiser" may not be used to describe a firm, partnership, corporation, group, or anyone other than an individual

licensee. However, a licensed real estate appraiser may engage in real estate appraisal as a professional corporation.

(3) This chapter does not preclude a person who is not a licensed or certified real estate appraiser from appraising real property for transactions not related to a federal agency or project for compensation, provided that the person does not purport to be a licensed or certified real estate appraiser. A person who purports that the person or the person's company is licensed under this section or certified under 37-54-302 through 37-54-304 without possessing the applicable license or certificate is guilty of a misdemeanor.

(4) This section does not:

(a) prohibit a person who is licensed to practice in this state under any law from engaging in the practice for which the person is licensed;

(b) apply to public officials in the conduct of their official duties that are not governed by the rules established by the federal financial institutions examination council agencies.

(5) A licensed or certified real estate appraiser is subject to restrictions on the scope of practice, depending on the value and complexity of the federally related transaction or transactions pursuant to rules established by the federal financial institutions examination council agencies, and the restrictions must remain current with any changes in those rules.

(6) A licensed real estate appraiser shall conspicuously display the license in the appraiser's principal place of business.

History: En. Sec. 5, Ch. 409, L. 1991; amd. Sec. 29, Ch. 481, L. 1997.

37-54-202. Qualifications for licensure. To qualify for a real estate appraiser license, an applicant:

(1) must be of good moral character;

(2) shall successfully complete a course of study prescribed by the board;

(3) must have the type and amount of experience in real estate appraisal prescribed by the board;

(4) shall successfully complete an examination prescribed by the board; and

(5) shall comply with any other requirements related to the practice of real estate appraisal as prescribed by the board by rule.

History: En. Sec. 6, Ch. 409, L. 1991; amd. Sec. 30, Ch. 481, L. 1997.

37-54-203. Repealed. Sec. 46, Ch. 481, L. 1997.

History: En. Sec. 7, Ch. 409, L. 1991.

37-54-204 through 37-54-209 reserved.

37-54-210. License renewal. (1) A real estate appraiser's license expires on the date set by department rule.

(2) A licensee may renew a license by filing an application with the board on a form approved by the board, paying a renewal fee prescribed by the board, and meeting all requirements of this chapter.

(3) In renewing a license, the board shall ensure that the licensee has a working knowledge of:

(a) current real estate appraisal theories; and

(b) practices and techniques that will enable the licensee to provide competent appraisal service under the authority of the license.

History: En. Sec. 8, Ch. 409, L. 1991; amd. Sec. 1, Ch. 81, L. 1993; amd. Sec. 110, Ch. 429, L. 1995; amd. Sec. 31, Ch. 481, L. 1997.

37-54-211. Late renewal of license. (1) A license that is not renewed within 1 year of the most recent renewal date automatically terminates. A licensee may renew the license within the 1-year period from the date of most recent renewal by:

(a) filing with the board an application for late renewal on a form approved by the board;

(b) satisfying the requirements for continued licensure; and

(c) paying a late renewal fee prescribed by the board.

(2) The board may refuse to renew a license if the licensee has continued to perform appraisal services as a licensed real estate appraiser following expiration of the license.

History: En. Sec. 9, Ch. 409, L. 1991; amd. Sec. 2, Ch. 81, L. 1993; amd. Sec. 111, Ch. 429, L. 1995; amd. Sec. 32, Ch. 481, L. 1997.

Part 3

Certification

37-54-301. Certification — use of term — standards of practice. (1) A person may not represent to the public that the person is a certified real estate appraiser unless the person is certified under this chapter.

(2) Only a certified real estate appraiser may prepare and sign a certified appraisal report relating to real estate or real property in this state. If an appraisal report is prepared, signed, and certified by a certified real estate appraiser, a person licensed under this chapter who assisted in the preparation of the appraisal may cosign the appraisal report.

(3) The term "certified real estate appraiser" may not be used to describe a firm, partnership, corporation, group, or anyone other than an individual certificate holder. However, a certified real estate appraiser may develop and communicate an appraisal on behalf of a firm, partnership, corporation, or group.

(4) Whenever an appraisal or appraiser report is identified by the certified real estate appraiser as "certified", the appraiser shall indicate in writing the class of certification the appraiser holds.

History: En. Sec. 17, Ch. 409, L. 1991; amd. Sec. 33, Ch. 481, L. 1997.

37-54-302. Certification process — fees. (1) An application for examination for certification, original certification, or renewal of certification must be made in writing to the board on forms approved by the board.

(2) A fee established by the board by rule must accompany the application.

(3) When an applicant files an application for original certification or renewal of certification, the applicant shall sign a pledge to comply with the standards of professional appraisal practice established for certified real estate appraisers under 37-54-403 and affirm that the applicant understands the types of misconduct for which disciplinary action may be initiated under 37-1-308.

(4) To be eligible for original certification as a real estate appraiser, an applicant shall:

(a) specify the class or classes of certification for which the applicant is applying and provide evidence satisfactory to the board that the applicant has the education required for the class or classes of certification for which application is made; and

(b) pass an examination prescribed by the board.

(5) A certificate issued under 37-54-305 must bear the signatures or facsimile signatures of the members of the board and a certificate number assigned by the board.

History: En. Sec. 18, Ch. 409, L. 1991; amd. Sec. 112, Ch. 429, L. 1995.

37-54-303. Classes of certification — education and experience requirements. (1) A real estate appraiser may be certified in one or both of the following classes:

(a) general real estate, which relates to the appraisal of all types of real property;

(b) residential real estate, which relates to the appraisal of expensive or complex 1 to 4 family homes.

(2) The board shall adopt rules pertaining to real estate appraisal education and experience that are at least as stringent as those required for compliance with Title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989.

History: En. Sec. 19, Ch. 409, L. 1991; amd. Sec. 3, Ch. 81, L. 1993.

37-54-304. Certification examination. (1) A person who satisfies the qualification requirements of 37-54-202 and the education and experience requirements of 37-54-303 may apply for examination as a certified real estate appraiser in the manner prescribed by this section.

(2) In addition to the examination subjects required by the board, an applicant must be examined on the types of misconduct for which disciplinary action may be initiated under this chapter.

(3) Examinations must be given at least four times each year at times and places as the board determines.

(4) An applicant may not retake the examination within 6 months after having failed it a second or subsequent time.

History: En. Sec. 20, Ch. 409, L. 1991; amd. Sec. 4, Ch. 81, L. 1993; amd. Sec. 34, Ch. 481, L. 1997.

37-54-305. Issuance and display of certificate. (1) The board shall issue a certificate and a pocket card to a person who meets the requirements of 37-54-302 through 37-54-304.

(2) The certificate must include the dates of issuance and renewal of certification.

(3) A certified real estate appraiser shall conspicuously display the certificate in the appraiser's principal place of business.

(4) A certified real estate appraiser shall designate the class for which the appraiser is certified and place the certificate number on each appraisal report, contract, or other instrument that the appraiser uses in conducting real estate appraisal activities.

History: En. Sec. 21, Ch. 409, L. 1991; amd. Sec. 35, Ch. 481, L. 1997.

37-54-306 through 37-54-309 reserved.

37-54-310. Renewal of certificate. (1) A certificate issued under 37-54-305 expires on the date set by department rule.

(2) A certificate may be renewed upon payment of a renewal fee and by meeting all requirements for renewal.

(3) An applicant for renewal shall state the class of certification previously held and presently sought.

History: En. Sec. 24, Ch. 409, L. 1991; amd. Sec. 5, Ch. 81, L. 1993; amd. Sec. 113, Ch. 429, L. 1995.

37-54-311. Late renewal of certificate. (1) A certificate that is not renewed within 1 year of the most recent renewal date automatically terminates. A certificate holder may renew the certificate within the 1-year period from the date of most recent renewal by:

(a) filing with the board an application for late renewal on a form approved by the board;

(b) satisfying the requirements set by law; and

(c) paying a late renewal fee prescribed by the board.

(2) The board may refuse to renew a certificate if the certificate holder has continued to perform appraisal services in this state following expiration of the certificate.

History: En. Sec. 25, Ch. 409, L. 1991; amd. Sec. 6, Ch. 81, L. 1993; amd. Sec. 114, Ch. 429, L. 1995; amd. Sec. 36, Ch. 481, L. 1997.

Part 4
Regulation of Practice

37-54-401. Repealed. Sec. 128, Ch. 429, L. 1995.
History: En. Sec. 10, Ch. 409, L. 1991.

37-54-402. Repealed. Sec. 128, Ch. 429, L. 1995.
History: En. Sec. 14, Ch. 409, L. 1991.

37-54-403. Standards of professional appraisal practice. (1) A licensed or certified real estate appraiser shall comply with generally accepted standards of professional appraisal practice, evidenced by the uniform standards of professional appraisal practice promulgated by the appraisal standards board of the appraisal foundation. A licensed or certified real estate appraiser shall comply with these standards regardless of whether the appraisal is a federally related transaction or is capable of being performed by an unlicensed person under 37-54-201(3).

(2) If the appraisal standards board of the appraisal foundation modifies the standards or issues supplemental standards that it considers appropriate for all classes of real estate appraisers, the modification is automatically adopted as observable in this state unless the board determines that a public hearing is necessary to determine whether the modified or supplemented standards must be observed in this state. If following the hearing the board determines that the modified or supplemented standards are appropriate, the board shall adopt the standards by rule.

History: En. Sec. 13, Ch. 409, L. 1991; amd. Sec. 7, Ch. 81, L. 1993; amd. Sec. 22, Ch. 230, L. 1999.

Compiler's Comments

1999 Amendment: Chapter 230 inserted second sentence in (1) requiring appraiser to comply with standards regardless of whether transaction federally related or capable of performance by unlicensed person; and made minor changes in style. Amendment effective October 1, 1999.

37-54-404 and 37-54-405 reserved.

37-54-406. Repealed. Sec. 128, Ch. 429, L. 1995.

History: En. Sec. 28, Ch. 409, L. 1991.

37-54-407 through 37-54-410 reserved.

37-54-411. Classification of services. (1) A client or employer may retain or employ a licensed or certified real estate appraiser to:

(a) act as a disinterested third party in rendering an unbiased analysis, opinion, conclusion, or estimate of value; or

(b) provide specialized appraisal services to facilitate the client's or employer's objectives.

(2) In either instance described in subsection (1), the appraisal and appraisal report must comply with the provisions of this chapter.

History: En. Sec. 16, Ch. 409, L. 1991.

37-54-412. Collection of appraisal fees. A person who performs independent appraisal services as a licensed or certified real estate appraiser in this state may not bring an action in any court in this state to collect compensation for the performance of those services unless he alleges and proves that he held a valid license or certificate at all times during the performance of those services.

History: En. Sec. 12, Ch. 409, L. 1991.

37-54-413 and 37-54-414 reserved.

37-54-415. Place of business. (1) A resident licensed or certified real estate appraiser shall maintain a principal place of business in this state. If the appraiser changes his principal place of business, he shall promptly notify the board in writing of the change. Upon receipt of notice of the change, the board shall issue a new license or certificate for the unexpired term, stating the principal place of business.

(2) A nonresident licensee is not required to maintain a place of business in this state if he maintains a principal place of business in his domicile state.

History: En. Sec. 11, Ch. 409, L. 1991.

37-54-416. Retention of records. (1) A licensed or certified real estate appraiser shall retain for 5 years from the date of submission of an appraisal report to a client:

(a) an original or true copy of any written contract engaging his services as an appraiser;

(b) an appraisal report prepared or signed by the licensed or certified real estate appraiser; and

(c) all supporting data assembled and formulated by the licensed or certified real estate appraiser in preparing the appraisal report.

(2) If a licensed or certified real estate appraiser is notified within this 5-year period that the appraisal report is involved in litigation, the appraiser

shall retain the appraisal report for 5 years from the final date of disposition of the litigation.

(3) The licensed or certified real estate appraiser shall make available to the board at reasonable times, for inspection and copying, any appraisal report he is required to maintain under the provisions of this section.

History: En. Sec. 15, Ch. 409, L. 1991.

37-54-417. Repealed. Sec. 128, Ch. 429, L. 1995.

History: En. Sec. 23, Ch. 409, L. 1991.

CHAPTERS 55 THROUGH 59

RESERVED

CHAPTER 60

PRIVATE INVESTIGATORS AND PATROL OFFICERS

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37-60-406. Peace officer's casual employment.
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37-60-408. Restrictions on use of certain automatic dial-up systems.
37-60-409. Installation of new security alarm systems by electrician.
37-60-410 reserved.
37-60-411. Penalties — investigation — enforcement — review.

Chapter Cross-References

Service of process and other papers, Title 25, ch. 3.

Weapons, Title 45, ch. 8, part 3.

Search and seizure, Title 46, ch. 5.

Arrest, Title 46, ch. 6.

Part 1

General

37-60-101. Definitions. As used in this chapter, the following definitions apply:

(1) "Alarm response runner" means any individual employed by a contract security company or a proprietary security organization to respond to security alarm system signals.

(2) "Armed carrier service" means any person who transports or offers to transport under armed private security guard from one place to another any currency, documents, papers, maps, stocks, bonds, checks, or other items of value that require expeditious delivery.

(3) "Armed private investigator" means a private investigator who at any time wears, carries, possesses, or has access to a firearm in the performance of his duties.

(4) "Armed private security guard" means an individual employed by a contract security company or a proprietary security organization whose duty or any portion of whose duty is that of a security guard, armored car service guard, carrier service guard, or alarm response runner and who at any time wears or carries a firearm in the performance of his duties.

(5) "Armored car service" means any person who transports or offers to transport under armed private security guard from one place to another any currency, jewels, stocks, bonds, paintings, or other valuables of any kind in a specially equipped motor vehicle that offers a high degree of security.

(6) "Board" means the board of private security patrol officers and investigators provided for in 2-15-1891.

(7) "Branch office" means any office of a licensee within the state, other than its principal place of business within the state.

(8) "Contract security company" means any person who installs or maintains a security alarm system, undertakes to provide a private security guard, alarm response runner, armored car service, street patrol service, or armed carrier service on a contractual basis to another person who exercises

no direction and control over the performance of the details of the services rendered.

(9) "Department" means the department of commerce provided for in 2-15-1801.

(10) "Insurance adjuster" means a person employed by an insurance company, other than a private investigator, who for any consideration whatsoever conducts investigations in the course of adjusting or otherwise participating in the disposal of any claims in connection with a policy of insurance but who does not perform surveillance activities or investigate crimes or wrongs committed or threatened against the United States or any state or territory thereof.

(11) "Licensee" means a person licensed under this chapter.

(12) "Paralegal" or "legal assistant" means a person qualified through education, training, or work experience to perform substantive legal work that requires knowledge of legal concepts and that is customarily but not exclusively performed by a lawyer and who may be retained or employed by one or more lawyers, law offices, governmental agencies, or other entities or who may be authorized by administrative, statutory, or court authority to perform this work.

(13) "Person" includes any individual, firm, company, association, organization, partnership, and corporation.

(14) "Private investigator" means a person other than an insurance adjuster who for any consideration whatsoever makes or agrees to make any investigation with reference to:

(a) crimes or wrongs done or threatened against the United States or any state or territory thereof;

(b) the identity, habits, conduct, business, occupation, honesty, integrity, trustworthiness, efficiency, loyalty, activity, movement, whereabouts, affiliations, associations, transactions, reputation, or character of any person;

(c) the location, disposition, or recovery of lost or stolen property;

(d) the cause or responsibility for fires, libels, losses, accidents, or injury to persons or property; or

(e) securing evidence to be used before any court, board, officer, or investigating committee.

(15) "Private security guard" means an individual employed or assigned duties to protect a person or property or both a person and property from criminal acts and whose duties or any portion of whose duties include but are not limited to the prevention of unlawful entry, theft, criminal mischief, arson, or trespass on private property, or the direction of the movements of the public in public areas.

(16) "Proprietary security organization" means any person who employs a private security guard, an alarm response runner, armored car service, street patrol service, or armed carrier service on a routine basis solely for the purposes of that person and exerts direction and control over the performance of the details of the service rendered.

(17) "Qualifying agent" means, in the case of a corporation, a corporate employee employed in a management capacity or, in the case of a partnership, a general or unlimited partner meeting the qualifications set forth in this

chapter for the operation of a contract security company, proprietary security organization, or private investigator, whichever is applicable.

(18) "Resident manager" means the person appointed to exercise direct supervision, control, charge, management, or operation of each branch office located in this state where the business of the licensee is conducted.

(19) "Security alarm system" means an assembly of equipment and devices or a single device such as a solid state unit which plugs directly into a 110-volt AC line, designed to detect or signal or to both detect and signal unauthorized intrusion, movement, or criminal acts at a protected premises, to which signals police, private security guards, or alarm response runners are expected to respond. Fire alarm systems and alarm systems that monitor temperature, humidity, or any other atmospheric condition not directly related to the detection of an unauthorized intrusion or criminal act at a premises are not included within the meaning of this definition.

(20) "Street patrol service" means any contract security company or proprietary security organization that uses foot patrols, motor vehicles, or any other means of transportation to maintain public order or detect criminal activities in public areas or thoroughfares.

(21) "Unarmed private investigator" means a private investigator who does not wear, carry, possess, or have access to a firearm in the performance of his duties.

(22) "Unarmed private security guard" means an individual employed by a contract security company or a proprietary security organization whose duty or any portion of whose duty is that of a private security guard, armored car service guard, or alarm response runner, who does not wear or carry a firearm in the performance of those duties.

History: En. 66-3301 by Sec. 1, Ch. 234, L. 1974; R.C.M. 1947, 66-3301; amd. Sec. 15, Ch. 274, L. 1981; amd. Sec. 2, Ch. 550, L. 1983; amd. Sec. 1, Ch. 647, L. 1985; amd. Sec. 1, Ch. 63, L. 1987; amd. Sec. 50, Ch. 83, L. 1989; amd. Sec. 1, Ch. 217, L. 1989; amd. Sec. 1, Ch. 332, L. 1989; amd. Sec. 1, Ch. 47, L. 1991.

Cross-References

Libel and slander, Title 27, ch. 1, part 8.

Criminal mischief and arson, Title 45, ch. 6, part 1.

Criminal trespass and burglary, Title 45, ch. 6, part 2.

Theft and related offenses, Title 45, ch. 6, part 3.

37-60-102. Repealed. Sec. 34, Ch. 550, L. 1983.

History: En. 66-3305 by Sec. 5, Ch. 234, L. 1974; R.C.M. 1947, 66-3305(1).

37-60-103. Purpose. The purpose of this chapter is to increase the levels of integrity, competency, and performance of private security personnel and private investigators in order to safeguard the public health, safety, and welfare against illegal, improper, or incompetent actions committed by private security personnel or private investigators.

History: En. 66-3305 by Sec. 5, Ch. 234, L. 1974; R.C.M. 1947, 66-3305(2); amd. Sec. 3, Ch. 550, L. 1983.

37-60-104. Restrictions on contract security company and proprietary security organization. No employee of a contract security company or proprietary security organization may make any investigation or investigations except those that are incidental to the theft, loss, embezzlement, misappropriation, or concealment of any property or any other thing which he has been hired or engaged to protect, guard, or watch.

History: En. 66-3305 by Sec. 5, Ch. 234, L. 1974; R.C.M. 1947, 66-3305(3); amd. Sec. 4, Ch. 550, L. 1983.

Cross-References

Theft and related offenses, Title 45, ch. 6, part 3.

37-60-105. Exemptions. This chapter does not apply to:

(1) (a) any one person employed singly and exclusively by any one employer in connection with the affairs of such employer only and where there exists an employer-employee relationship and the employee is unarmed, does not wear a uniform, and is guarding inside a structure which at the time is not open to the public;

(b) a person:

(i) employed singly and exclusively by a retail merchant;

(ii) performing at least some of his work for the retail merchant as a private security guard; and

(iii) who has received training as a private security guard from the employer or at the employer's direction;

(2) an officer or employee of the United States of America or of this state or a political subdivision thereof while such officer or employee is engaged in the performance of his official duties;

(3) a person engaged exclusively in the business of obtaining and furnishing information as to the financial rating of persons or as to the personal habits and financial responsibility of applicants for insurance, indemnity bonds, or commercial credit;

(4) (a) an attorney at law in performing his duties as an attorney at law;

(b) a legal intern, paralegal, or legal assistant employed by one or more lawyers, law offices, governmental agencies, or other entities; or

(c) a law student who is serving a legal internship;

(5) a collection agency or finance company licensed to do business under the laws of this state, or an employee thereof while acting within the scope of his employment, while making an investigation incidental to the business of the agency or company, including an investigation of the location of a debtor or his property where the contract with an assignor creditor is for the collection of claims owed or due or asserted to be owed or due or the equivalent thereof;

(6) special agents employed by railroad companies, provided the railroad company notifies the board that such agents are operating in the state;

(7) insurers and insurance producers and insurance brokers licensed by the state, performing duties in connection with insurance transacted by them;

(8) an insurance adjuster, as defined by 37-60-101(10); or

(9) an internal investigator or auditor, while making an investigation incidental to the business of the agency or company by which he is singularly and regularly employed.

History: En. 66-3306 by Sec. 6, Ch. 234, L. 1974; R.C.M. 1947, 66-3306; amd. Sec. 5, Ch. 550, L. 1983; amd. Sec. 2, Ch. 647, L. 1985; amd. Sec. 2, Ch. 63, L. 1987; amd. Sec. 2, Ch. 332, L. 1989; amd. Sec. 2, Ch. 47, L. 1991.

Cross-References

Consumer reporting agencies, Title 31, ch. 3, part 1.

Insurance producers, adjusters, consultants, and administrators, Title 33, ch. 17.

Part 2
Director of Department — Board

Part Cross-References

Duties and powers of Department heads, 2-15-112.

Board established, 2-15-1891.

Duties of Director, 37-1-121.

37-60-201. Organization — meetings — records. The board shall meet annually and shall elect from among the seven members a president and a secretary. The board shall hold other meetings when necessary to transact its business. A majority of the board constitutes a quorum at any meeting. The department shall keep complete minutes and records of the meetings and rules and orders promulgated by the board. Copies of records and papers kept by the department, certified by the chairman and authenticated by the seal of the board, shall be received in evidence in courts with like effect as the original. Records of the board are open to public inspection under rules it prescribes.

History: En. 66-3302 by Sec. 2, Ch. 234, L. 1974; R.C.M. 1947, 66-3302; amd. Sec. 6, Ch. 550, L. 1983.

37-60-202. Rulemaking power. The board shall adopt and enforce rules:

(1) specifying the form of and procedure to be used in granting, denying, suspending, or revoking any license or identification card;

(2) fixing the qualifications of resident managers, qualifying agents, licensees, and holders of identification cards, in addition to those prescribed in this chapter, necessary to promote and protect the public welfare;

(3) establishing, in accordance with 37-1-134, application and examination fees for original or renewal licenses and identification cards, and providing for refunding of any fees;

(4) prohibiting the establishment of branch offices of any licensee, except a proprietary security organization, without approval by the board, establishing qualification requirements and license fees for those offices;

(5) for the certification of private investigator and private security guard training programs, including the certification of firearms training programs and firearms instructors;

(6) for the approval of weapons;

(7) requiring the maintenance of records;

(8) requiring licensees to file an insurance policy or proof of financial responsibility as the board considers necessary with the board; and

(9) providing for the issuance of probationary identification cards for private investigators who do not meet the requirements for age, employment experience, and written examination.

History: En. 66-3303 by Sec. 3, Ch. 234, L. 1974; R.C.M. 1947, 66-3303; amd. Sec. 7, Ch. 550, L. 1983; amd. Sec. 8, Ch. 647, L. 1985; amd. Sec. 3, Ch. 63, L. 1987; amd. Sec. 115, Ch. 429, L. 1995.

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

37-60-203 through 37-60-210 reserved.

37-60-211. Compensation of board members — expenses. Each member of the board shall receive compensation and travel expenses as provided for in 37-1-133.

History: En. Sec. 8, Ch. 550, L. 1983.

37-60-212. Repealed. Sec. 128, Ch. 429, L. 1995.

History: En. Sec. 9, Ch. 550, L. 1983; amd. Sec. 48, Ch. 281, L. 1983.

Part 3
Licensing

Part Cross-References

Proof of execution, Title 1, ch. 5, part 3.

Power of notary to take acknowledgments, 1-5-416.

Oaths, Title 1, ch. 6.

Licensing to follow contested case procedure, 2-4-631.

Suspension of license fees for persons in military service, 10-1-605.

Licensing boards to establish fees commensurate with costs, 37-1-134.

Licensing investigation and review — record access, 37-1-135.

Grounds for disciplinary action as grounds for license denial — conditions to new licenses, 37-1-137.

Licensure of criminal offenders, Title 37, ch. 1, part 2.

Carrying or possession of firearms, 37-60-101.

Certification of firearms training programs, 37-60-202.

Approval of weapons, 37-60-405.

Perjury, 45-7-201.

False swearing, 45-7-202.

Nondiscrimination in licensing, 49-3-204.

37-60-301. License required. (1) Except as provided in 37-60-105 and 37-60-315, it is unlawful for any person to act as or perform the duties, as defined in 37-60-101, of a contract security company or proprietary security organization, a private investigator, or a private security guard without having first obtained a license from the board. Those persons licensed on April 18, 1983, shall retain their current licensure status and shall renew their licenses on the renewal date as prescribed by the department.

(2) It is unlawful for any unlicensed person to act as, pretend to be, or represent to the public that the person is licensed as a private investigator, a contract security company, a proprietary security organization, or a private security guard.

(3) A person appointed by the court as a confidential intermediary under 42-6-104 is not required to be licensed under this chapter. A person who is licensed under this chapter is not authorized to act as a confidential intermediary, as defined in 42-1-103, without meeting the requirements of 42-6-104.

(4) A person who knowingly engages an unlicensed private investigator, private security guard, or contract security company is guilty of a misdemeanor punishable under 37-60-411.

History: En. 66-3304 by Sec. 4, Ch. 234, L. 1974; R.C.M. 1947, 66-3304; amd. Sec. 10, Ch. 550, L. 1983; amd. Sec. 4, Ch. 63, L. 1987; amd. Sec. 116, Ch. 429, L. 1995; amd. Sec. 2, Ch. 360, L. 1997; amd. Sec. 164, Ch. 480, L. 1997.

37-60-302. Qualifying agent and resident manager required — substitution. (1) Any person not a resident of this state who applies for a license under this chapter shall, before application to the board, appoint for the duration of the license a qualifying agent and a resident manager. Every qualifying agent and resident manager shall satisfy the appropriate licensing requirements of this chapter.

(2) A resident manager must be appointed for each branch office located in this state, and the business of the applicant or licensee must be conducted under his direct supervision and control.

(3) If a qualifying agent or resident manager for any reason ceases to perform the duties of a qualifying agent or resident manager on a regular basis, the licensee shall promptly notify the board by certified mail of that fact and of the name of a substitute individual, who shall make application to the board for continuation of the license. Pending application by and board action upon the application of the substitute, the board may suspend the license or extend it for a reasonable time.

History: En. 66-3307 by Sec. 7, Ch. 234, L. 1974; R.C.M. 1947, 66-3307; amd. Sec. 11, Ch. 550, L. 1983; amd. Sec. 3, Ch. 647, L. 1985.

37-60-303. License qualifications. (1) Except as otherwise specified in this section, an applicant for licensure under this chapter shall submit evidence under oath that the applicant:

(a) is at least 18 years of age;

(b) is a citizen of the United States;

(c) has not been convicted in any jurisdiction of any felony or any crime involving moral turpitude or illegal use or possession of a dangerous weapon, for which a full pardon or similar relief has not been granted;

(d) has not been judicially declared incompetent by reason of any mental defect or disease or, if so declared, has been fully restored;

(e) is not suffering from habitual drunkenness or from narcotics addiction or dependence;

(f) is of good moral character; and

(g) has complied with other experience qualifications as may be set by the rules of the board.

(2) In addition to meeting the qualifications in subsection (1), an applicant for licensure as a private security guard shall:

(a) complete the training requirements of a private security guard training program certified by the board and provide, on a form prescribed by the board, written notice of satisfactory completion of the training; and

(b) fulfill other requirements as the board may by rule prescribe.

(3) In addition to meeting the qualifications in subsection (1), each applicant for a license to act as a private investigator shall submit evidence under oath that the applicant:

(a) is at least 21 years of age;

(b) has at least a high school education or its equivalent;

(c) has not been dishonorably discharged from any branch of the United States military service;

(d) for a period of not less than 3 years:

(i) has been lawfully engaged in the private investigative business;

(ii) has been lawfully employed as a private investigator or been the holder of a certificate of authority to conduct a private investigative business; or

(iii) has been an investigator, detective, special agent, or peace officer of a city, county, or state government or of the United States government; and

(e) has fulfilled any other requirements as the board may by rule prescribe.

(4) Up to one-half of the experience required by subsection (3)(d) may be met by a combination of education and training as accepted by the board. All

college credits must be from an accredited college or university and be verified by transcript.

(5) Applicants who will wear or carry firearms in performance of their duties shall submit written notice of satisfactory completion of a firearms training program certified by or satisfactory to the board, as it may by rule prescribe.

(6) A corporation applying for a license under this section must be incorporated under the laws of this state or be duly qualified to do business within this state.

(7) The board shall require an applicant to demonstrate by written examination such additional qualifications as the board may by rule require.

History: En. 66-3308 by Sec. 8, Ch. 234, L. 1974; R.C.M. 1947, 66-3308; amd. Sec. 12, Ch. 550, L. 1983; amd. Sec. 4, Ch. 647, L. 1985; amd. Sec. 5, Ch. 63, L. 1987; amd. Sec. 37, Ch. 481, L. 1997.

37-60-304. Licenses — application form and content. (1) Application for a license shall be made on a form prescribed by the board and accompanied by the application fee set by the board.

(2) An application shall be made under oath and shall include:

(a) the full name and address of the applicant;

(b) the name under which the applicant intends to do business;

(c) a statement as to the general nature of the business in which the applicant intends to engage;

(d) a statement as to whether the applicant desires to be licensed as a contract security company, a proprietary security organization, a private investigator, or a private security guard;

(e) two recent photographs of the applicant, of a type prescribed by the board, and two classifiable sets of his fingerprints;

(f) a statement of his age and experience qualifications;

(g) such other information, evidence, statements, or documents as may be prescribed by the rules of the board; and

(h) if the applicant is a person other than an individual, the full name and residence address of each of its partners, officers, and directors and its manager.

(3) The board shall verify the statements in the application and the applicant's moral character. The board shall send written notification to the chief of police, the sheriff, and the county attorney in whose jurisdiction the principal office of the applicant is to be located that an application has been submitted.

History: En. 66-3309 by Sec. 9, Ch. 234, L. 1974; R.C.M. 1947, 66-3309; amd. Sec. 22, Ch. 22, L. 1979; amd. Sec. 13, Ch. 550, L. 1983; amd. Sec. 5, Ch. 647, L. 1985; amd. Sec. 6, Ch. 63, L. 1987.

37-60-305. Repealed. Sec. 18, Ch. 63, L. 1987.

History: En. 66-3310 by Sec. 10, Ch. 234, L. 1974; R.C.M. 1947, 66-3310; amd. Sec. 14, Ch. 550, L. 1983; amd. Sec. 6, Ch. 647, L. 1985.

37-60-306. Repealed. Sec. 18, Ch. 63, L. 1987.

History: En. 66-3311 by Sec. 11, Ch. 234, L. 1974; R.C.M. 1947, 66-3311; amd. Sec. 3, Ch. 274, L. 1981; amd. Sec. 15, Ch. 550, L. 1983; amd. Sec. 7, Ch. 647, L. 1985.

37-60-307. Repealed. Sec. 128, Ch. 429, L. 1995.

History: En. 66-3312 by Sec. 12, Ch. 234, L. 1974; R.C.M. 1947, 66-3312; amd. Sec. 16, Ch. 550, L. 1983; amd. Sec. 7, Ch. 63, L. 1987; amd. Sec. 3, Ch. 332, L. 1989.

37-60-308. Repealed. Sec. 128, Ch. 429, L. 1995.

History: En. 66-3313 by Sec. 13, Ch. 234, L. 1974; R.C.M. 1947, 66-3313; amd. Sec. 17, Ch. 550, L. 1983; amd. Sec. 8, Ch. 63, L. 1987; amd. Sec. 51, Ch. 83, L. 1989.

37-60-309. Form of license and identification cards. The license, identification card, and temporary identification card for temporary security guards must be in a form determined by the board.

History: En. 66-3314 by Sec. 14, Ch. 234, L. 1974; R.C.M. 1947, 66-3314; amd. Sec. 18, Ch. 550, L. 1983; amd. Sec. 9, Ch. 63, L. 1987; amd. Sec. 3, Ch. 360, L. 1997.

37-60-310. Display of license and identification card. (1) A license must at all times be posted in a conspicuous place in the principal place of business of the licensee.

(2) A holder of an identification card or a temporary identification card shall carry the card while performing the cardholder's duties. A peace officer of this state or any of its political subdivisions may request to see the card at any reasonable time, and the card must be shown.

History: En. 66-3315 by Sec. 15, Ch. 234, L. 1974; R.C.M. 1947, 66-3315; amd. Sec. 20, Ch. 550, L. 1983; amd. Sec. 10, Ch. 63, L. 1987; amd. Sec. 4, Ch. 360, L. 1997.

37-60-311. Repealed. Sec. 34, Ch. 550, L. 1983.

History: En. 66-3316 by Sec. 16, Ch. 234, L. 1974; R.C.M. 1947, 66-3316.

37-60-312. Renewal. (1) Licenses and identification cards issued under this chapter expire at midnight on the dates prescribed by department rule if not, in each instance, renewed. To renew an unexpired license, the licensee shall, on or before the date on which it would otherwise expire, apply for renewal on a form prescribed by the board and pay the renewal fee prescribed by this chapter.

(2) The board may refuse to renew a license or identification card for any reason for which it could refuse to grant an original application or suspend or revoke any license or identification card.

History: En. 66-3329 by Sec. 29, Ch. 234, L. 1974; R.C.M. 1947, 66-3329; amd. Sec. 21, Ch. 550, L. 1983; amd. Sec. 11, Ch. 63, L. 1987; amd. Sec. 117, Ch. 429, L. 1995.

37-60-313. Repealed. Sec. 34, Ch. 550, L. 1983.

History: En. 66-3330 by Sec. 30, Ch. 234, L. 1974; amd. Sec. 1, Ch. 42, L. 1975; R.C.M. 1947, 66-3330.

37-60-314. Nontransferability of license — record changes. (1) No license issued under this chapter is transferable.

(2) A licensee shall notify the board within 5 days of any change in its officers or directors or other material change in the information previously furnished or required to be furnished to the board or any other material change or occurrence that could reasonably be expected to affect the licensee's right to a license. Upon such change or occurrence, the board may suspend or revoke the license or may allow the business to be carried on for a temporary period under terms and conditions as the board may require.

(3) This section may not be applied to restrict the sale of a business if the buyer qualifies for a license under the provisions of this chapter.

History: En. 66-3317 by Sec. 17, Ch. 234, L. 1974; R.C.M. 1947, 66-3317; amd. Sec. 22, Ch. 550, L. 1983.

37-60-315. Temporary security guard may work under licensee — record and temporary identification card required. (1) This chapter does not prohibit a person from working as a temporary private security guard if:

(a) the person is not employed by a licensed private security guard for more that 30 consecutive days or for more than 30 days in a calendar year; and

(b) the person does not wear, carry, possess, or have access to a firearm in the performance of the person's duties until a background check on the person has been completed by the board and the board is satisfied that the person has met the qualifications specified in 37-60-303(5).

(2) The licensee shall file with the department:

(a) a completed application for licensure for the person within 5 days of hiring the person to work as a temporary security guard, to allow the department to conduct an in-state background check;

(b) a quarterly report accurately documenting the total number of days or hours and in what capacity each person has been employed during each calendar year; and

(c) notice that a temporary security guard has been terminated within 5 days of the termination date.

(3) The department shall keep a record of the name and address of each person working as a temporary security guard until the person's employment with a licensee is terminated.

(4) Within 2 days of receiving the results of the in-state background check for a temporary security guard, the department shall issue a temporary identification card to the temporary security guard. The temporary identification card must contain the information prescribed by the board by rule.

(5) A licensee who assigns a temporary security guard to a business shall notify the business that a background check may not have been completed on the temporary security guard.

History: En. Sec. 1, Ch. 360, L. 1997.

37-60-316 through 37-60-319 reserved.

37-60-320. Fees. (1) The fees prescribed by the board and collected by the department must be deposited into the state special revenue fund for the use of the board, subject to 37-1-101(6).

(2) The department shall keep an accurate account of funds received and vouchers issued by the department.

History: En. Sec. 19, Ch. 550, L. 1983; amd. Sec. 48, Ch. 281, L. 1983.

37-60-321. Repealed. Sec. 128, Ch. 429, L. 1995.

History: En. 66-3327 by Sec. 27, Ch. 234, L. 1974; R.C.M. 1947, 66-3327; amd. Sec. 23, Ch. 550, L. 1983; amd. Sec. 12, Ch. 63, L. 1987.

37-60-322. Repealed. Sec. 128, Ch. 429, L. 1995.

History: En. Sec. 24, Ch. 550, L. 1983; amd. Sec. 13, Ch. 63, L. 1987.

Part 4

Provisions Regulating Practice

37-60-401. Responsibility of licensee for conduct of employees. A licensee shall at all times be legally responsible for the good conduct in the business of each employee, including his manager.

History: En. 66-3318 by Sec. 18, Ch. 234, L. 1974; R.C.M. 1947, 66-3318.

Cross-References

Agency, Title 28, ch. 10.

Criminal trespass and burglary, Title 45, ch. 6, part 2.

37-60-402. Confidentiality of information — false reports — badges and uniforms — illegal entry. (1) A licensee or officer, director, partner, or manager of a licensee may divulge to any law enforcement officer or county attorney or his representative any information he may acquire as to any criminal offense, but he may not divulge to any other person, except as required by law, any information acquired by him except at the direction of the employer or client for whom the information was obtained.

(2) No licensee or officer, director, partner, manager, or employee of a licensee may knowingly make any false report to his employer or client for whom information was being obtained.

(3) No written report may be submitted to a client except by the licensee, qualifying manager, or a person authorized by either of them, and the person submitting the report shall exercise diligence in ascertaining whether or not the facts and information in the report are true and correct.

(4) No licensee or officer, director, partner, manager, or employee of a licensee may use a title, wear a uniform, use an identification card, or make any statement with the intent to give an impression that he is connected in any way with the federal government, a state government, or any political subdivision of a state government.

(5) No licensee or officer, director, partner, manager, or employee of a licensee may enter any private building or portion thereof without the consent of the owner or of the person in legal possession thereof.

History: En. 66-3319 by Sec. 19, Ch. 234, L. 1974; amd. Sec. 29, Ch. 101, L. 1977; R.C.M. 1947, 66-3319; amd. Sec. 25, Ch. 550, L. 1983.

Cross-References

Criminal trespass and burglary, Title 45, ch. 6, part 2.

Impersonating public servant, 45-7-209.

37-60-403. Licensee advertising. Every advertisement by a licensee soliciting or advertising business shall contain his name and address as they appear in the records of the board.

History: En. 66-3321 by Sec. 21, Ch. 234, L. 1974; R.C.M. 1947, 66-3321; amd. Sec. 26, Ch. 550, L. 1983.

37-60-404. Duty to maintain employee records. Each employer shall maintain a record containing such information relative to his employees as may be prescribed by the board.

History: En. 66-3320 by Sec. 20, Ch. 234, L. 1974; R.C.M. 1947, 66-3320; amd. Sec. 27, Ch. 550, L. 1983.

37-60-405. Approval of weapons. The weapons to be carried by armed licensees or identification card holders must be approved by the board.

History: En. 66-3328 by Sec. 28, Ch. 234, L. 1974; R.C.M. 1947, 66-3328; amd. Sec. 28, Ch. 550, L. 1983; amd. Sec. 14, Ch. 63, L. 1987.

Cross-References

Weapons, Title 45, ch. 8, part 3.

37-60-406. Peace officer's casual employment. A peace officer, as defined in 46-1-202, or a reserve officer, as defined in 7-32-201, is not prohibited or restricted from accepting and engaging in employment as a security guard during his off-duty hours, provided that he does not advertise his services or solicit employment and further provided that the chief of his department previously approves the off-duty employment. A peace officer or reserve officer engaged in casual employment is exempt from the provisions of this chapter only if the casual employment is authorized in writing by his sheriff or chief of police.

History: **En. Sec. 29, Ch. 550, L. 1983; amd. Sec. 15, Ch. 63, L. 1987; amd. Sec. 255, Ch. 800, L. 1991.**

37-60-407. Regulation of uniforms, badges, and equipment. (1) No licensee or officer, director, partner, manager, or employee of a licensee may wear, carry, or display a badge in connection with the activities of the licensee's business.

(2) The board is authorized to establish rules regulating uniforms and any emblems, patches, insignias, and devices that may be either worn or displayed on uniforms, vehicles, or equipment.

History: **En. Sec. 30, Ch. 550, L. 1983; amd. Sec. 16, Ch. 63, L. 1987.**

Cross-References

Impersonating public servant, 45-7-209.

37-60-408. Restrictions on use of certain automatic dial-up systems. No person may install or use a security alarm system designed to automatically call a predetermined law enforcement telephone number without written permission from the chief law enforcement officer of the local government in which the alarm system is installed.

History: **En. Sec. 1, Ch. 240, L. 1985.**

37-60-409. Installation of new security alarm systems by electrician. An electrician who has received a license from the department pursuant to 37-68-301 may install new security alarm systems under the direction of a journeyman security alarm installer, but such work performed by an electrician is subject to inspection and approval by a security alarm installer licensed under 37-60-303.

History: **En. Sec. 9, Ch. 647, L. 1985.**

37-60-410 reserved.

37-60-411. Penalties — investigation — enforcement — review. (1) Any person who violates any of the provisions of this chapter or who conspires with another person to violate any of the provisions of this chapter relating to licensure is guilty of a misdemeanor punishable by a fine of not more than $1,000, by imprisonment of not more than 1 year, or by both fine and imprisonment.

(2) The board shall:

(a) gather evidence of violations of this chapter, and of any rule established pursuant to this chapter, by persons engaged in a business subject to licensure under this chapter who fail to obtain licenses; and

(b) furnish that evidence to prosecuting officers of any county or city.

(3) The prosecuting officer of any county or city shall prosecute all violations of this chapter occurring within the prosecutor's jurisdiction.

History: **En. Sec. 31, Ch. 550, L. 1983; amd. Sec. 17, Ch. 63, L. 1987; amd. Sec. 118, Ch. 429, L. 1995.**

CHAPTER 61

ATTORNEYS AT LAW

Part 1 — Licensing Authorities

37-61-101. Repealed.
37-61-102. Attorneys' examining board — appointment, quorum, and powers.
37-61-103. Compensation and expenses of members of board.

Part 2 — Licensing

37-61-201. Who considered to be practicing law.
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37-61-412. Partner of public prosecutor not to defend.
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37-61-416. Party may appear in person or by attorney.
37-61-417. Attorney may defend in person.
37-61-418. Attorney may see prisoner.

37-61-419. Attorney not to become surety on bond.
37-61-420. Judgment lien for compensation.
37-61-421. Attorney's or litigant's liability for excess costs.

Chapter Cross-References

Power of Supreme Court to make rules governing practice and admission to bar, Art. VII, sec. 2, Mont. Const.

Restrictions on practice of law by judges, Art. VII, sec. 9, Mont. Const.

Licensed attorney — exemption from regulation of escrow business, 32-7-103.

Professional service corporations, Title 35, ch. 4.

Limited duty of attorney to report violations of Montana Elder and Persons With Developmental Disabilities Abuse Prevention Act, 52-3-811.

Part 1
Licensing Authorities

Part Cross-References

Limited duty of attorney to report violations of Montana Elder and Persons With Developmental Disabilities Abuse Prevention Act, 52-3-811.

Attorneys and counselors-at-law, Rule VI, Rules of Supreme Court of Montana (see annotation at Art. VII, sec. 2, Mont. Const.).

37-61-101. Repealed. Sec. 1, Ch. 198, L. 1999.

History: En. Sec. 396, C. Civ. Proc. 1895; re-en. Sec. 6387, Rev. C. 1907; re-en. Sec. 8942, R.C.M. 1921; re-en. Sec. 8942, R.C.M. 1935; R.C.M. 1947, 93-2007.

37-61-102. Attorneys' examining board — appointment, quorum, and powers. (1) The supreme court shall appoint members of the bar of this state, in good standing, as an examining board to conduct and assist in conducting the examination of applicants for admission to the bar. The board may not exceed seven members. The court may release, dismiss, or remove any member of the board and appoint other members at any time.

(2) A majority of the board is a quorum and may conduct examinations.

(3) The board shall perform the duties and render assistance in the examinations of applicants as prescribed by the court and is governed and controlled by the rules that the court may prescribe.

History: En. Sec. 5, Ch. 90, L. 1917; re-en. Sec. 8948, R.C.M. 1921; re-en. Sec. 8948, R.C.M. 1935; R.C.M. 1947, 93-2013; amd. Sec. 1, Ch. 221, L. 1993.

37-61-103. Compensation and expenses of members of board. The members of said board shall be entitled to their travel expenses in attending meetings of said board and in conducting such examination and also when away from their homes or places of residence, as provided for in 2-18-501 through 2-18-503, and shall be paid such compensation for services performed by them as members of said board as may be fixed and determined by the supreme court.

History: En. Sec. 6, Ch. 90, L. 1917; re-en. Sec. 8949 R.C.M. 1921; re-en. Sec. 8949, R.C.M. 1935; amd. Sec. 82, Ch. 147, L. 1963; amd. Sec. 63, Ch. 439, L. 1975; R.C.M. 1947, 93-2014.

Part 2
Licensing

Part Cross-References

Attorneys and counselors-at-law, Rule VI, Rules of Supreme Court of Montana (see annotation at Art. VII, sec. 2, Mont. Const.).

Rules for determining residence, 1-1-215.

Licensing to follow contested case procedure, 2-4-631.

Practice of law by Workers' Compensation Judge unlawful, 2-15-1707.

Certain officers not to practice law, 3-1-601.

Restrictions on practice of law by certain officers, 7-4-2210.

Licensure of criminal offenders, Title 37, ch. 1, part 2.

Nondiscrimination in licensing, 49-3-204.

37-61-201. Who considered to be practicing law. Any person who shall hold himself out or advertise as an attorney or counselor at law or who shall appear in any court of record or before a judicial body, referee, commissioner, or other officer appointed to determine any question of law or fact by a court or who shall engage in the business and duties and perform such acts, matters, and things as are usually done or performed by an attorney at law in the practice of his profession for the purposes of parts 1 through 3 of this chapter shall be deemed practicing law.

History: En. Sec. 1, Ch. 90, L. 1917; re-en. Sec. 8944, R.C.M. 1921; re-en. Sec. 8944, R.C.M. 1935; R.C.M. 1947, 93-2009.

37-61-202. Repealed. Sec. 1, Ch. 198, L. 1999.

History: En. Sec. 390, C. Civ. Proc. 1895; re-en. Sec. 6381, Rev. C. 1907; re-en. Sec. 8936, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 275; re-en. Sec. 8936, R.C.M. 1935; amd. Sec. 11, Ch. 168, L. 1971; R.C.M. 1947, 93-2001(part); amd. Sec. 60, Ch. 10, L. 1993.

37-61-203. Clerk, sheriff, or coroner may not practice law. The clerk, deputy clerk, sheriff, undersheriff, deputy sheriff, or coroner must not, during his continuance in office, practice as attorney and counselor in any court.

History: En. Sec. 429, C. Civ. Proc. 1895; re-en. Sec. 6421, Rev. C. 1907; re-en. Sec. 8992, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 171; re-en. Sec. 8992, R.C.M. 1935; R.C.M. 1947, 93-2119.

37-61-204. Repealed. Sec. 1, Ch. 198, L. 1999.

History: En. Sec. 391, C. Civ. Proc. 1895; re-en. Sec. 6382, Rev. C. 1907; amd. Sec. 1, Ch. 18, L. 1915; re-en. Sec. 8937, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 276; re-en. Sec. 8937, R.C.M. 1935; amd. Sec. 35, Ch. 101, L. 1977; R.C.M. 1947, 93-2002; amd. sec. 36, Ch. 308, L. 1995.

37-61-205. Repealed. Sec. 1, Ch. 198, L. 1999.

History: En. Sec. 7, Ch. 90, L. 1917; re-en. Sec. 8950, R.C.M. 1921; re-en. Sec. 8950, R.C.M. 1935; amd. Sec. 83, Ch. 147, L. 1963; R.C.M. 1947, 93-2015; amd. Sec. 1, Ch. 220, L. 1983; amd. Sec. 1, Ch. 493, L. 1993.

37-61-206. Repealed. Sec. 1, Ch. 198, L. 1999.

History: En. Sec. 392, C. Civ. Proc. 1895; re-en. Sec. 6383, Rev. C. 1907; re-en. Sec. 8938, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 277; re-en. Sec. 8938, R.C.M. 1935; R.C.M. 1947, 93-2003.

37-61-207. Oath. Every person on his admission must take an oath to support the Constitution of the United States and The Constitution of the State of Montana and to faithfully discharge the duties of an attorney and counselor at law with fidelity to the best of his knowledge and ability. A certificate of such oath must be endorsed upon the license and a duplicate filed with the clerk.

History: En. Sec. 393, C. Civ. Proc. 1895; re-en. Sec. 6384, Rev. C. 1907; re-en. Sec. 8939, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 278; re-en. Sec. 8939, R.C.M. 1935; R.C.M. 1947, 93-2004.

Cross-References

Oath defined, 1-1-201.

Oaths, Title 1, ch. 6.

37-61-208. Repealed. Sec. 1, Ch. 198, L. 1999.

History: En. Sec. 394, C. Civ. Proc. 1895; re-en. Sec. 6385, Rev. C. 1907; amd. Sec. 1, Ch. 13, L. 1911; re-en. Sec. 8940, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 279; re-en. Sec. 8940, R.C.M. 1935; R.C.M. 1947, 93-2005.

37-61-209. Repealed. Sec. 1, Ch. 198, L. 1999.

History: En. Sec. 395, C. Civ. Proc. 1895; re-en. Sec. 6386, Rev. C. 1907; re-en. Sec. 8941, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 280; re-en. Sec. 8941, R.C.M. 1935; R.C.M. 1947, 93-2006.

37-61-210. Penalty for practicing without license. If any person practices law in any court, except a justice's court or a city court, without having received a license as attorney and counselor, he is guilty of a contempt of court.

History: En. Sec. 397, C. Civ. Proc. 1895; re-en. Sec. 6388, Rev. C. 1907; re-en. Sec. 8943, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 281; re-en. Sec. 8943, R.C.M. 1935; R.C.M. 1947, 93-2008.

Cross-References

Contempts, Title 3, ch. 1, part 5.

Justices' Courts, Title 3, ch. 10.

City Courts, Title 3, ch. 11.

Procedure in Justices' Courts, Title 25, ch. 31.

Payment of attorney fees to unlicensed persons forbidden, 37-61-215.

37-61-211. Annual license tax — municipal tax prohibited. (1) Every attorney or counselor at law admitted by the supreme court of the state to practice his profession within the state is required to pay a license tax of $25 a year. The tax is payable to and collected by the clerk of the supreme court on or before April 1 of each year.

(2) Upon the payment of the tax, the clerk shall issue and deliver a certificate to the person paying the tax, certifying to the payment of the license tax and stating the period covered by the payment.

(3) A license tax may not be imposed upon attorneys by a municipality or any other subdivision of the state.

History: En. Sec. 2, Ch. 90, L. 1917; re-en. Sec. 8945, R.C.M. 1921; re-en. Sec. 8945, R.C.M. 1935; amd. Sec. 1, Ch. 18, L. 1961; R.C.M. 1947, 93-2010; amd. Sec. 1, Ch. 379, L. 1989.

Cross-References

Disposition of fees, 3-2-404.

Contribution of fees to judges' retirement fund, 19-5-404.

37-61-212. Collection of delinquent license tax. If any practicing attorney or counselor at law shall fail, neglect, or refuse to pay to the clerk of the supreme court the license tax imposed by this chapter for a period of 30 days after the same is due and payable, it shall be the duty of the clerk of the supreme court to take such action for the collection of the same as is required of the county treasurer in cases of nonpayment of other licenses, as provided by 7-21-2116, and the provisions of 7-21-2115 through 7-21-2117 shall control in said proceedings so far as the same are applicable thereto.

History: En. Sec. 16, Ch. 90, L. 1917; re-en. Sec. 8959, R.C.M. 1921; re-en. Sec. 8959, R.C.M. 1935; R.C.M. 1947, 93-2024.

37-61-213. Disposition of license tax. All moneys so collected during any month shall, on or before the first day of the succeeding month, be delivered to and deposited with the state treasurer by the clerk of the supreme court, and the state treasurer shall deposit such moneys in the general fund.

History: En. Sec. 3, Ch. 90, L. 1917; re-en. Sec. 8946, R.C.M. 1921; re-en. Sec. 8946, R.C.M. 1935; amd. Sec. 81, Ch. 147, L. 1963; R.C.M. 1947, 93-2011.

Cross-References

Disposition of fees, 3-2-404.

Contribution of fees to judges' retirement fund, 19-5-404.

37-61-214. Penalty for practicing without certificate indicating payment of tax. No attorney shall practice or be permitted to practice his profession in any of the courts of record in this state until he shall have paid such license tax for the current fiscal year and procured a certificate, as hereinabove provided, and any attorney violating this section shall be guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not less than $25.

History: En. Sec. 4, Ch. 90, L. 1917; re-en. Sec. 8947, R.C.M. 1921; re-en. Sec. 8947, R.C.M. 1935; R.C.M. 1947, 93-2012.

37-61-215. Allowance of attorneys' fees to unlicensed persons forbidden. It shall be unlawful for any court within this state to allow attorneys' fees in any action or proceeding before said court in which attorneys' fees are allowed by law to either party to such action or proceeding when such party is represented by anyone other than a duly admitted or licensed attorney at law.

History: En. Sec. 15, Ch. 90, L. 1917; re-en. Sec. 8958, R.C.M. 1921; re-en. Sec. 8958, R.C.M. 1935; R.C.M. 1947, 93-2023.

Part 3

Disbarment and Suspension

Part Cross-References

Orders of Supreme Court of Montana relating to Commission on Practice, see annotation at Art. VII, sec. 2, Mont. Const.

Rules of Commission on Practice, see annotation at Art. VII, sec. 2, Mont. Const.

Guidelines for local grievance committee procedure, see annotation at Art. VII, sec. 2, Mont. Const.

Pleadings, motions, and other papers, Title 25, ch. 4.

Trials, Title 25, ch. 7.

Montana Rules of Civil Procedure, Title 25, ch. 20.

Licensure of criminal offenders, Title 37, ch. 1, part 2.

37-61-301. Disbarment. (1) The supreme court of the state shall have exclusive jurisdiction to remove or suspend attorneys and counselors at law.

(2) An attorney and counselor may be removed or suspended for any of the following causes arising after his admission to practice:

(a) his conviction of a felony or misdemeanor involving moral turpitude, in which case the record of conviction is conclusive evidence;

(b) willful disobedience or violation of an order of the court requiring him to do or forbear an act connected with or in the course of his profession which he ought in good faith to do or forbear and any violation of the oath taken by him or of his duties as such attorney and counselor;

(c) corruptly or willfully and without authority appearing as attorney for a party to an action or proceeding;

(d) lending his name to be used as attorney and counselor by another person who is not an attorney and counselor;

(e) being guilty of deceit, malpractice, crime, or misdemeanor involving moral turpitude.

History: En. Sec. 402, C. Civ. Proc. 1895; amd. Sec. 1, Ch. 36, L. 1903; re-en. Sec. 6393, Rev. C. 1907; re-en. Sec. 8961, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 287; re-en. Sec. 8961, R.C.M. 1935; R.C.M. 1947, 93-2026(part).

37-61-302. Record of conviction. In case of the conviction of an attorney and counselor of a felony or misdemeanor involving moral turpitude, the clerk of the court in which such conviction is had shall, within 30 days thereafter, transmit to the supreme court a certified copy of the record of conviction.

History: En. Sec. 417, C. Civ. Proc. 1895; re-en. Sec. 6409, Rev. C. 1907; re-en. Sec. 8962, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 288; re-en. Sec. 8962, R.C.M. 1935; R.C.M. 1947, 93-2027.

37-61-303. Proceedings required on receipt of record of conviction. The proceedings to remove or suspend an attorney and counselor under 37-61-301(2)(a) must be taken by the court on the receipt of a certified copy of the record of conviction. The proceedings under 37-61-301(2)(b), (2)(c), or (2)(d) may be taken by the court for the matters within its knowledge or may be taken upon the information of another.

History: En. Sec. 418, C. Civ. Proc. 1895; re-en. Sec. 6410, Rev. C. 1907; re-en. Sec. 8963, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 289; re-en. Sec. 8963, R.C.M. 1935; R.C.M. 1947, 93-2028.

37-61-304. Repealed. Sec. 1, Ch. 388, L. 1983.

History: En. Sec. 8, Ch. 90, L. 1917; re-en. Sec. 8951, R.C.M. 1921; re-en. Sec. 8951, R.C.M. 1935; R.C.M. 1947, 93-2016.

37-61-305. Repealed. Sec. 1, Ch. 388, L. 1983.

History: En. Sec. 9, Ch. 90, L. 1917; re-en. Sec. 8952, R.C.M. 1921; re-en. Sec. 8952, R.C.M. 1935; R.C.M. 1947, 93-2017.

37-61-306. Repealed. Sec. 1, Ch. 388, L. 1983.

History: En. Sec. 10, Ch. 90, L. 1917; re-en. Sec. 8953, R.C.M. 1921; re-en. Sec. 8953, R.C.M. 1935; R.C.M. 1947, 93-2018.

37-61-307. Supreme court to make procedural rules — referees. (1) The supreme court may make rules regulating pleadings, practice, and procedure in such action or proceeding; and in the absence of such rules, the law relating to pleadings, practice, and procedure in civil actions, so far as applicable, shall control.

(2) The court may order a reference as authorized by Rule 53, M.R.Civ.P.; and in the event of a reference, the referee or referees shall have the powers provided in such rule and shall receive such compensation as shall be fixed and allowed by the supreme court.

History: En. Sec. 11, Ch. 90, L. 1917; re-en. Sec. 8954, R.C.M. 1921; re-en. Sec. 8954, R.C.M. 1935; R.C.M. 1947, 93-2019.

37-61-308. Witness fees and expenses. Witnesses on behalf of the complainant in any such action or proceeding shall be entitled to the fees and mileage provided by law for witnesses in civil actions in the district court.

History: En. Sec. 12, Ch. 90, L. 1917; re-en. Sec. 8955, R.C.M. 1921; re-en. Sec. 8955, R.C.M. 1935; amd. Sec. 84, Ch. 147, L. 1963; R.C.M. 1947, 93-2020.

Cross-References

Mileage allowance, 2-18-503.

Witness fees, Title 26, ch. 2, part 5.

37-61-309. Judgment. Upon conviction, in cases arising under 37-61-301(2)(a), the judgment of the court must be that the name of the party be stricken from the roll of attorneys and counselors of the court and that he be precluded from practicing as such attorney or counselor in all the courts of this state. Upon conviction in cases under the other subsections of that section, the judgment of the court may be, according to the gravity of the offense charged, deprivation of the right to practice as attorney or counselor in the courts of this state permanently or for a limited period.

History: En. Sec. 428, C. Civ. Proc. 1895; re-en. Sec. 6420, Rev. C. 1907; re-en. Sec. 8973, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 299; re-en. Sec. 8973, R.C.M. 1935; R.C.M. 1947, 93-2038.

Cross-References

Duty of Clerk of Supreme Court to keep roll of attorneys, 3-2-402.

Part 4
Provisions Regulating Practice

37-61-401. Authority of attorney. (1) An attorney and counselor has authority to:

(a) bind his client in any steps of an action or proceeding by his agreement filed with the clerk or entered upon the minutes of the court and not otherwise;

(b) receive money claimed by his client in an action or proceeding during the pendency thereof or after judgment unless a revocation of his authority is filed and, upon the payment thereof and not otherwise, to discharge the claim or acknowledge satisfaction of the judgment.

(2) The death of a party to an action or proceeding does not revoke the authority of his attorney of record in said action or proceeding, but the authority of the attorney is continued in all respects the same and with like effect as it was prior to the death of such party until such attorney shall withdraw his appearance in said action or proceeding or some other attorney shall be substituted for him or his authority shall be otherwise terminated and entry thereof made to appear in the record of such action or proceeding.

History: En. Sec. 398, C. Civ. Proc. 1895; re-en. Sec. 6389, Rev. C. 1907; amd. Sec. 1, Ch. 35, L. 1915; re-en. Sec. 8974, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 283; re-en. Sec. 8974, R.C.M. 1935; R.C.M. 1947, 93-2101.

37-61-402. Production of proof of authority to court. The court or judge, on motion of either party, may require the attorney of the adverse party to produce and prove the authority under which he appears and may stay all proceedings until such is shown and may at any time summarily relieve a party from the consequences of the acts of an unauthorized attorney.

History: En. Sec. 431, C. Civ. Proc. 1895; re-en. Sec. 6423, Rev. C. 1907; re-en. Sec. 8994, R.C.M. 1921; re-en. Sec. 8994, R.C.M. 1935; R.C.M. 1947, 93-2121.

37-61-403. Change of attorney. The attorney in an action or special proceeding may be changed at any time before or after judgment or final determination, as follows:

(1) upon consent of both client and attorney, filed with the clerk or entered upon the minutes;

(2) upon the order of the court, upon the application of either client or attorney, after notice from one to the other.

History: En. Sec. 399, C. Civ. Proc. 1895; re-en. Sec. 6390, Rev. C. 1907; re-en. Sec. 8975, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 284; re-en. Sec. 8975, R.C.M. 1935; R.C.M. 1947, 93-2102.

37-61-404. Notice of change. When an attorney is changed as provided in 37-61-403, written notice of the change and the substitution of a new attorney or of the appearance of the party in person must be given to the adverse party. Until then he must recognize the former attorney.

History: En. Sec. 400, C. Civ. Proc. 1895; re-en. Sec. 6391, Rev. C. 1907; re-en. Sec. 8976, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 285; re-en. Sec. 8976, R.C.M. 1935; R.C.M. 1947, 93-2103.

37-61-405. Death or removal of attorney. When an attorney dies or is removed or suspended or ceases to act as such, a party to an action for whom he was acting as attorney must, before any further proceedings are had against him, be required by the adverse party, by written notice, to appoint another attorney or appear in person.

History: En. Sec. 401, C. Civ. Proc. 1895; re-en. Sec. 6392, Rev. C. 1907; re-en. Sec. 8977, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 286; re-en. Sec. 8977, R.C.M. 1935; R.C.M. 1947, 93-2104.

Cross-References

Service of notice of appeal upon death of attorney, Rule 4, M.R.App.P. (see Title 25, ch. 21).

37-61-406. Penalty for deceit. An attorney or counselor who is guilty of any deceit or collusion or consents to any deceit or collusion with intent to deceive the court or a party forfeits to the party injured by his deceit or collusion treble damages. He is also guilty of a misdemeanor.

History: En. Sec. 403, C. Civ. Proc. 1895; re-en. Sec. 6395, Rev. C. 1907; re-en. Sec. 8978, R.C.M. 1921; Cal. Pen. C. Sec. 160; re-en. Sec. 8978, R.C.M. 1935; R.C.M. 1947, 93-2105.

Cross-References

Misdemeanor penalty when none specified, 46-18-212.

37-61-407. Penalty for delay. An attorney and counselor who willfully delays his client's cause with a view to his own gain or willfully receives money or an allowance for or on account of money which he has not laid out or become answerable for forfeits to the party injured treble damages.

History: En. Sec. 404, C. Civ. Proc. 1895; re-en. Sec. 6396, Rev. C. 1907; re-en. Sec. 8979, R.C.M. 1921; Cal. Pen. C. Sec. 160; re-en. Sec. 8979, R.C.M. 1935; R.C.M. 1947, 93-2106.

Cross-References

Willfully defined, 1-1-204.

Damages for appeal without merit, Rule 32, M.R.App.P. (see Title 25, ch. 21).

37-61-408. Attorney prohibited from buying claim or demand for purpose of bringing action. (1) An attorney and counselor must not directly or indirectly buy or be in any manner interested in buying a bond, promissory note, bill of exchange, book debt, or other thing in action with the intent and for the purpose of bringing an action thereon.

(2) An attorney and counselor must not, by himself or by or in the name of another person, either before or after action brought, promise or give or procure to be promised or given a valuable consideration to any person as an inducement to placing or in consideration of having placed in his hands or in the hands of another person a demand of any kind for the purpose of bringing an action thereon. This subsection does not apply to an agreement between attorneys and counselors, or either, to divide between themselves the compensation to be received.

History: (1)En. Sec. 405, C. Civ. Proc. 1895; re-en. Sec. 6397, Rev. C. 1907; re-en. Sec. 8980, R.C.M. 1921; Cal. Pen. C. Sec. 161; re-en. Sec. 8980, R.C.M. 1935; Sec. 93-2107, R.C.M. 1947; (2)En. Sec. 406, C. Civ. Proc. 1895; re-en. Sec. 6398, Rev. C. 1907; re-en. Sec. 8981, R.C.M. 1921; re-en. Sec. 8981, R.C.M. 1935; Sec. 93-2108, R.C.M. 1947; R.C.M. 1947, 93-2107, 93-2108(part).

37-61-409. Penalty for violation. An attorney and counselor who violates 37-61-408 is guilty of a misdemeanor and on conviction thereof shall be punished accordingly and must be removed from office by the supreme court.

History: En. Sec. 406, C. Civ. Proc. 1895; re-en. Sec. 6398, Rev. C. 1907; re-en. Sec. 8981, R.C.M. 1921; re-en. Sec. 8981, R.C.M. 1935; R.C.M. 1947, 93-2108(part); amd. Sec. 23, Ch. 22, L. 1979.

Cross-References

Misdemeanor penalty when none specified, 46-18-212.

37-61-410. Limitation. Sections 37-61-407 through 37-61-409 do not prohibit the receipt by an attorney or counselor of a bond, promissory note, bill of exchange, book debt, or other thing in action in payment for property sold or for services actually rendered or for a debt antecedently contracted or from buying or receiving a bill of exchange, draft, or other thing in action for the purpose of remittance and without intent to violate any of those sections.

History: En. Sec. 407, C. Civ. Proc. 1895; re-en. Sec. 6399, Rev. C. 1907; re-en. Sec. 8982, R.C.M. 1921; re-en. Sec. 8982, R.C.M. 1935; R.C.M. 1947, 93-2109.

37-61-411. Same rule when party prosecutes in person. Sections 37-61-407 through 37-61-410 apply to a person prosecuting an action in person who does an act which an attorney and counselor is therein forbidden to do.

History: En. Sec. 408, C. Civ. Proc. 1895; re-en. Sec. 6400, Rev. C. 1907; re-en. Sec. 8983, R.C.M. 1921; re-en. Sec. 8983, R.C.M. 1935; R.C.M. 1947, 93-2110.

37-61-412. Partner of public prosecutor not to defend. An attorney and counselor must not directly or indirectly advise concerning, aid, or take any part in the defense of an action or special proceeding, civil or criminal, brought, carried on, aided, advocated, or prosecuted, as attorney general, county attorney, or other public prosecutor, by a person with whom he is interested or connected, either directly or indirectly, as a law partner; or take or receive, directly or indirectly, from a defendant therein or other person a fee, gratuity, or reward for or upon any cause, consideration, pretense, understanding, or agreement whatever, express or implied, having relation thereto or to the prosecution or defense thereof.

History: En. Sec. 409, C. Civ. Proc. 1895; re-en. Sec. 6401, Rev. C. 1907; re-en. Sec. 8984, R.C.M. 1921; Cal. Pen. C. Sec. 162; re-en. Sec. 8984, R.C.M. 1935; R.C.M. 1947, 93-2111.

Cross-References

Standards of conduct, Title 2, ch. 2.

Limitations on activities of County Attorneys and Deputy County Attorneys, 7-4-2704.

37-61-413. Former public prosecutors not to defend. An attorney and counselor who has brought, carried on, aided, advocated, or prosecuted or has been in anywise connected with an action or special proceeding, civil or criminal, as attorney general, county attorney, or other public prosecutor, must not, at any time thereafter, directly or indirectly advise concerning, aid, or take any part in the defense thereof; or take or receive, either directly or indirectly, from a defendant therein or other person a fee, gratuity, or reward for or upon any cause, consideration, pretense, understanding, or agreement, either express or implied, having relation thereto or to the prosecution or defense thereof.

History: En. Sec. 410, C. Civ. Proc. 1895; re-en. Sec. 6402, Rev. C. 1907; re-en. Sec. 8985, R.C.M. 1921; Cal. Pen. C. Sec. 162; re-en. Sec. 8985, R.C.M. 1935; R.C.M. 1947, 93-2112.

Cross-References

Standards of conduct, Title 2, ch. 2.

Limitations on activities of County Attorneys and Deputy County Attorneys, 7-4-2704.

37-61-414. Partners not to appear on opposite sides. Whenever a law partnership or any member thereof accepts employment to prosecute or defend any action, civil or criminal, or to advise in relation thereto, no member of said partnership is permitted, then or afterward, to act as attorney or counselor on the side opposite to that upon which such original employment was had. This section does not prevent a person who has been employed as attorney and counselor in an action or proceeding before becoming a member of a partnership from appearing and acting therein until its completion.

History: En. Sec. 411, C. Civ. Proc. 1896; Re-en. Sec. 6403, Rev. C. 1907; re-en. Sec. 8986, R.C.M. 1921; re-en. Sec. 8986, R.C.M. 1935; R.C.M. 1947, 93-2113.

37-61-415. Penalty for violation of two preceding sections. An attorney and counselor who violates either 37-61-413 or 37-61-414 is guilty of a misdemeanor and on conviction thereof shall be punished accordingly and must be removed from office by the supreme court.

History: En. Sec. 412, C. Civ. Proc. 1895; re-en. Sec. 6404, Rev. C. 1907; re-en. Sec. 8987, R.C.M. 1921; re-en. Sec. 8987, R.C.M. 1935; R.C.M. 1947, 93-2114.

Cross-References

Misdemeanor penalty when none specified, 46-18-212.

37-61-416. Party may appear in person or by attorney. A party to a civil action who is of full age may prosecute or defend the same in person or by attorney at his election unless he has been judicially declared to be incompetent to manage his affairs. Each provision of this part relating to the conduct of an action wherein the attorney for the party is mentioned includes a party prosecuting or defending in person unless otherwise specially prescribed therein or unless that construction is manifestly repugnant to the context. If a party has an attorney in the action, he cannot appear or act in person where an attorney may appear or act either by special provisions of law or by the course and practice of the court.

History: En. Sec. 413, C. Civ. Proc. 1895; re-en. Sec. 6405, Rev. C. 1907; re-en. Sec. 8988, R.C.M. 1921; re-en. Sec. 8988, R.C.M. 1935; R.C.M. 1947, 93-2115.

37-61-417. Attorney may defend in person. This part does not prohibit an attorney or counselor from defending himself in person if prosecuted either civilly or criminally.

History: En. Sec. 414, C. Civ. Proc. 1895; re-en. Sec. 6406, Rev. C. 1907; re-en. Sec. 8989, R.C.M. 1921; Cal. Pen. C. Sec. 163; re-en. Sec. 8989, R.C.M. 1935; R.C.M. 1947, 93-2116.

37-61-418. Attorney may see prisoner. All public officers, sheriffs, coroners, jailers, constables, or other officers or persons having in custody any person committed, imprisoned, or restrained of his liberty for any alleged cause whatever must admit any practicing attorney and counselor at law in this state whom such person restrained of his liberty may desire to see or consult, to see and consult such person so imprisoned, alone and in private, at the jail or other place of custody. Any officer violating this provision shall forfeit and pay $100 to the person aggrieved, to be recovered by action of debt in any court of competent jurisdiction.

History: En. Sec. 13, p. 373, Bannack Stat.; re-en. Sec. 13, p. 378, Cod. Stat. 1871; re-en. Sec. 52, 5th Div. Rev. Stat. 1879; re-en. Sec. 114, 5th Div. Comp. Stat. 1887; re-en. Sec. 415, C. Civ. Proc. 1895; re-en. Sec. 6407, Rev. C. 1907; re-en. Sec. 8990, R.C.M. 1921; re-en. Sec. 8990, R.C.M. 1935; R.C.M. 1947, 93-2117.

37-61-419. Attorney not to become surety on bond. (1) Without the consent of the district court judge who had first approved the security, no attorney and counselor at law shall become security in any bond or recognizance of any sheriff, constable, or coroner or upon any bond, undertaking, or recognizance authorized by any statute, to be taken for the payment of any sum of money into court in default of the principal.

(2) No attorney at law may act as surety for bail or furnish bail.

History: En. Sec. 14, p. 373, Bannack Stat.; re-en. Sec. 14, p. 378, Cod. Stat. 1871; re-en. Sec. 53, 5th Div. Rev. Stat. 1879; re-en. Sec. 115, 5th Div. Comp. Stat. 1887; re-en. Sec. 416, C. Civ. Proc. 1895; re-en. Sec. 6408, Rev. C. 1907; re-en. Sec. 8991, R.C.M. 1921; re-en. Sec. 8991, R.C.M. 1935; R.C.M. 1947, 93-2118; amd. Sec. 164, Ch. 575, L. 1981.

Cross-References

Bail, Title 46, ch. 9.

37-61-420. Judgment lien for compensation. (1) The compensation of an attorney and counselor for his services is governed by agreement, express or implied, which is not restrained by law.

(2) From the commencement of an action or the service of an answer containing a counterclaim, the attorney who appears for a party has a lien upon his client's cause of action or counterclaim which attaches to a verdict, report, decision, or judgment in his client's favor and the proceeds thereof in whose hands they may come. Such lien cannot be affected by any settlement between the parties before or after judgment.

History: En. Sec. 430, C. Civ. Proc. 1895; re-en. Sec. 6422, Rev. C. 1907; re-en. Sec. 8993, R.C.M. 1921; re-en. Sec. 8993, R.C.M. 1935; R.C.M. 1947, 93-2120.

Cross-References

Judgment, Title 25, ch. 9.

Attorney fees, Title 25, ch. 10, part 3.

Execution of judgment, Title 25, ch. 13.

Liens of physicians, nurses, and hospitals, 71-3-1114.

37-61-421. Attorney's or litigant's liability for excess costs. An attorney or party to any court proceeding who, in the determination of the court, multiplies the proceedings in any case unreasonably and vexatiously may be required by the court to satisfy personally the excess costs, expenses, and attorney fees reasonably incurred because of such conduct.

History: En. Sec. 1, Ch. 533, L. 1985.

CHAPTER 62

POLYGRAPH EXAMINERS

(Repealed. Sec. 128, Ch. 429, L. 1995)

Part 1 — General

37-62-101. Definitions.
37-62-102. Powers and duties of department.

Part 2 — Licensing

37-62-201. License required.
37-62-202. Issuance of examiner's license with examination.
37-62-203. Issuance of examiner's license — reciprocity.
37-62-204. Terms of license — renewal.
37-62-205. Form of license — display of license.
37-62-206. Pocket card.
37-62-207. Continuing education.
37-62-208. Fees.
37-62-209. Internship license.
37-62-210 and 37-62-211 reserved.
37-62-212. Suspension and revocation.
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Part 3 — Miscellaneous Provisions

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37-62-302. Inadmissibility of results as evidence.
37-62-303. Pre-test procedure — termination of examination.
37-62-304 through 37-62-310 reserved.
37-62-311. Penalty.

Chapter Compiler's Comments

Histories of Repealed Sections:

37-62-101. En. Sec. 1, Ch. 185, L. 1983; amd. Sec. 1, Ch. 547, L. 1985.

37-62-102. En. Sec. 3, Ch. 185, L. 1983.

37-62-201. En. Sec. 4, Ch. 185, L. 1983.

37-62-202. En. Sec. 6, Ch. 185, L. 1983.

37-62-203. En. Sec. 5, Ch. 185, L. 1983.

37-62-204. En. Sec. 9, Ch. 185, L. 1983; amd. Sec. 2, Ch. 547, L. 1985.

37-62-205. En. Sec. 10, Ch. 185, L. 1983.

37-62-206. En. Sec. 11, Ch. 185, L. 1983.

37-62-207. En. Sec. 8, Ch. 185, L. 1983.

37-62-208. En. Sec. 7, Ch. 185, L. 1983; amd. Sec. 48, Ch. 281, L. 1983.

37-62-209. En. Sec. 3, Ch. 547, L. 1985.

37-62-210 and 37-62-211 reserved.

37-62-212. En. Sec. 13, Ch. 185, L. 1983.

37-62-213. En. Sec. 14, Ch. 185, L. 1983.

37-62-301. En. Sec. 2, Ch. 185, L. 1983.

37-62-302. En. Sec. 12, Ch. 185, L. 1983.

37-62-303. En. Sec. 4, Ch. 547, L. 1985.

37-62-304 through 37-62-310 reserved.

37-62-311. En. Sec. 15, Ch. 185, L. 1983.

CHAPTERS 63 AND 64

RESERVED

CHAPTER 65
ARCHITECTURE

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37-65-102. Definitions.
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Part 2 — Board of Architects

37-65-201. Organization — meetings — records.
37-65-202. Compensation of board members — expenses.
37-65-203. Exclusive licensing jurisdiction — no additional fee.
37-65-204. Rulemaking.

Part 3 — Licensing

37-65-301. License required.
37-65-302. Licensure limited to individuals.
37-65-303. Application — examination — issuance of license.
37-65-304. Examination fee — deposit of fee.
37-65-305. Repealed.
37-65-306. Renewal — fee.
37-65-307. Deposit of license fees.
37-65-308. Seal of architect.
37-65-309. Repealed.
37-65-310 through 37-65-320 reserved.
37-65-321. Repealed.
37-65-322. Penalty.
37-65-323. Injunction.

Chapter Cross-References

Construction contracts, Title 18, ch. 2.

Procurement of architectural, engineering, and land surveying services by governmental entities, Title 18, ch. 8, part 2.

Professional service corporations, Title 35, ch. 4.

Building construction standards, Title 50, ch. 60.

Part 1
General

37-65-101. Purpose. It is hereby declared, as a matter of legislative policy in the state of Montana, that the practice of architecture is a privilege granted by legislative authority and is not a natural right of individuals and that it is necessary, as a matter of such policy and in the interests of the health, safety, and welfare of the people of Montana, to provide laws covering the granting of that privilege and its subsequent use, control, and regulation for the purpose of protecting the public from the unprofessional, improper, unauthorized, and unqualified practice of architecture.

History: En. 66-101.1 by Sec. 1, Ch. 544, L. 1977; R.C.M. 1947, 66-101.1.

37-65-102. Definitions. Unless the context requires otherwise, in this chapter the following definitions apply:

(1) "Architect" means an individual technically and legally qualified to practice architecture and who is authorized under this chapter to practice architecture.

(2) "Board" means the board of architects provided for in 2-15-1871.

(3) "Building" means a structure intended primarily for human occupancy or use.

(4) "Department" means the department of commerce provided for in Title 2, chapter 15, part 18.

(5) "Practice of architecture" means any professional service or creative work requiring the application of advanced knowledge of architectural design, building construction, and standards and involving the constant exercise of discretion and judgment in such activities, in which the safeguarding of life, health, or property is concerned, as consultation, investigation, evaluation, planning, design, or inspection of construction for any public or private building.

(6) "Public building" means any building which the state or any political subdivision thereof maintains for the use of the public.

History: En. Sec. 3, Ch. 158, L. 1917; re-en. Sec. 3231, R.C.M. 1921; re-en. Sec. 3231, R.C.M. 1935; amd. Sec. 1, Ch. 149, L. 1957; amd. Sec. 2, Ch. 439, L. 1973; amd. Sec. 26, Ch. 350, L. 1974; amd. Sec. 2, Ch. 544, L. 1977; R.C.M. 1947, 66-103(2); amd. Sec. 5, Ch. 388, L. 1979; amd. Sec. 3, Ch. 274, L. 1981; amd. Sec. 1, Ch. 490, L. 1983.

37-65-103. Exemptions. (1) Nothing contained in this chapter shall prevent draftsmen, students, clerks of work, superintendents, and other employees of those lawfully practicing as architects under the provisions of this chapter from acting under the instruction, control, or supervision of their employers or to prevent the employment of superintendents of the construction, enlargement, or structural alteration of buildings or any appurtenance thereto.

(2) Nothing contained in this chapter shall be construed to:

(a) apply to alterations to any building which do not involve changes affecting the structural safety thereof or the public health;

(b) prevent the preparation of details and shop drawings by persons other than architects for use in connection with the execution of their work; or

(c) prevent the preparation of drawings or details for fixtures, cabinetwork, furniture, or other interior appliances or equipment or for any work necessary to provide for their installation unless the same involves public health or safety.

(3) None of the acts enumerated in subsections (1) and (2) shall be interpreted or construed as the practice of architecture.

(4) Nothing in this chapter shall be construed to affect or prevent the following, provided that no words, letters, figures, or other device shall be used in such manner as to tend to convey the impression that the person rendering such service is an architect duly registered under this chapter:

(a) consultants, officers, and employees of the United States while engaged solely in the practice of architecture for said government;

(b) professional engineers from performing architectural services which are purely incidental to their engineering practice;

(c) any person from planning, designing, altering, repairing, supervising, or engaging in residential construction consisting of less than eight living units regardless of size or cost or farm buildings which are not intended for use or used as a public building;

(d) the planning, design, alteration, construction, repair, or supervision of construction of a building by its owner if the building is not intended for use or used as a public building.

History: En. Sec. 7, Ch. 158, L. 1917; re-en. Sec. 3235, R.C.M. 1921; re-en. Sec. 3235, R.C.M. 1935; amd. Sec. 2, Ch. 149, L. 1957; amd. Sec. 3, Ch. 439, L. 1973; amd. Sec. 4, Ch. 544, L. 1977; R.C.M. 1947, 66-107(b), (c).

Cross-References

Policy regarding state practice of architecture, 18-2-111.

Part 2
Board of Architects

Part Cross-References

Right to know, Art. II, sec. 9, Mont. Const.

Oath defined, 1-1-201.

Oaths, Title 1, ch. 6.

Open meetings, Title 2, ch. 3, part 2.

Meeting defined, 2-3-202.

Public records, Title 2, ch. 6.

Allocation of boards for administrative purposes, 2-15-121.

Quasi-judicial boards, 2-15-124.

Board established, 2-15-1871.

Preservation of records, Title 22, ch. 3, part 2.

Duties of Department, Director, and boards, Title 37, ch. 1, part 1.

Perjury, 45-7-201.

False swearing, 45-7-202.

Disrupting meeting as disorderly conduct, 45-8-101.

37-65-201. Organization — meetings — records. (1) The board must, during the first week in April of each year, elect from among its number a president, secretary, and treasurer and must have a seal.

(2) The president and secretary may administer oaths in the examination of applications for certificates and to witnesses called before the board for the transaction of business under this chapter.

(3) The board shall meet at places the board determines during the first week of April of each year and at other times.

(4) The department must keep a record of proceedings of the board.

(5) The department must keep a register of applicants for a certificate, with the name and age of applicants, the number of years spent in the study of architecture, and whether the applicant was granted a certificate or rejected. The register is prima facie evidence of the matters contained in it.

History: En. Sec. 2, Ch. 158, L. 1917; re-en. Sec. 3230, R.C.M. 1921; re-en. Sec. 3230, R.C.M. 1935; amd. Sec. 25, Ch. 350, L. 1974; R.C.M. 1947, 66-102.

37-65-202. Compensation of board members — expenses. Each member of the board is entitled to receive compensation and travel expenses as provided in 37-1-133.

History: En. Sec. 9, Ch. 158, L. 1917; re-en. Sec. 3237, R.C.M. 1921; re-en. Sec. 3237, R.C.M. 1935; amd. Sec. 141, Ch. 147, L. 1963; amd. Sec. 2, Ch. 138, L. 1967; amd. Sec. 18, Ch. 93, L. 1969; amd. Sec. 5, Ch. 439, L. 1973; amd. Sec. 28, Ch. 350, L. 1974; amd. Sec. 24, Ch. 439, L. 1975; R.C.M. 1947, 66-109(1); amd. Sec. 30, Ch. 474, L. 1981; amd. Sec. 2, Ch. 490, L. 1983; amd. Sec. 38, Ch. 481, L. 1997.

37-65-203. Exclusive licensing jurisdiction — no additional fee. The board is vested with exclusive jurisdiction to issue licenses for the privilege of practicing architecture. No other state agency or political subdivision of the state, including counties and municipalities, may levy any fee or tax for such privilege.

History: En. Sec. 10, Ch. 158, L. 1917; re-en. Sec. 3238, R.C.M. 1921; re-en. Sec. 3238, R.C.M. 1935; amd. Sec. 3, Ch. 138, L. 1967; amd. Sec. 29, Ch. 350, L. 1974; amd. Sec. 5, Ch. 544, L. 1977; R.C.M. 1947, 66-110(2).

37-65-204. Rulemaking. The board of architects may adopt, amend, or repeal rules necessary for the implementation and enforcement of this chapter in accordance with the provisions of the Montana Administrative Procedure Act.

History: En. Sec. 9, Ch. 490, L. 1983.

Cross-References

Montana Administrative Procedure Act, Title 2, ch. 4.

Part 3
Licensing

Part Cross-References

Seal defined, 1-4-201.

Licensing to follow contested case procedure, 2-4-631.

Suspension of license fees for persons in military service, 10-1-605.

Duty of Department to administer and grade examinations, 37-1-101.

Duty of Board to adopt and enforce licensing and certification rules, 37-1-131.

Licensing boards to establish fees commensurate with costs, 37-1-134.

Grounds for disciplinary action as grounds for license denial — conditions to new licenses, 37-1-137.

Licensure of criminal offenders, Title 37, ch. 1, part 2.

Nondiscrimination in licensing, 49-3-204.

37-65-301. License required. Except as provided in this chapter, no person may practice architecture in this state or use the title "architect" or "licensed architect" or any words, letters, figures, or other device indicating or intending to imply that he is an architect, without having qualified under this chapter.

History: En. Sec. 3, Ch. 158, L. 1917; re-en. Sec. 3231, R.C.M. 1921; re-en. Sec. 3231, R.C.M. 1935; amd. Sec. 1, Ch. 149, L. 1957; amd. Sec. 2, Ch. 439, L. 1973; amd. Sec. 26, Ch. 350, L. 1974; amd. Sec. 2, Ch. 544, L. 1977; R.C.M. 1947, 66-103(1); amd. Sec. 3, Ch. 490, L. 1983.

37-65-302. Licensure limited to individuals. No firm, company, partnership, association, corporation, or other similar organization shall be licensed as an architect. Only individuals shall be licensed as architects, but a number of architects constituting a firm may use the collective title "architects" or "licensed architects".

History: En. Sec. 7, Ch. 158, L. 1917; re-en. Sec. 3235, R.C.M. 1921; re-en. Sec. 3235, R.C.M. 1935; amd. Sec. 2, Ch. 149, L. 1957; amd. Sec. 3, Ch. 439, L. 1973; amd. Sec. 4, Ch. 544, L. 1977; R.C.M. 1947, 66-107(a); amd. Sec. 4, Ch. 490, L. 1983.

37-65-303. Application — examination — issuance of license. (1) A person wishing to practice architecture in this state shall apply to the department for a license to do so. A person applying shall have successfully completed the requirement of prerequisites in education, practical experience, and a written examination as prescribed by the board. The examination must be in substantial conformance with the standard national council of architectural registration boards examination and grading procedure, except as modified by board rules.

(2) After examination the department shall, if the candidate has been found qualified, grant a license to the candidate to practice architecture in this state, which may only be granted on the consent of not less than two members of the board, attested by the secretary, and have the seal of the board attached.

History: En. Sec. 3, Ch. 158, L. 1917; re-en. Sec. 3231, R.C.M. 1921; re-en. Sec. 3231, R.C.M. 1935; amd. Sec. 1, Ch. 149, L. 1957; amd. Sec. 2, Ch. 439, L. 1973; amd. Sec. 26, Ch. 350, L. 1974; amd. Sec. 2, Ch. 544, L. 1977; R.C.M. 1947, 66-103(part); amd. Sec. 6, Ch. 388, L. 1979; amd. Sec. 5, Ch. 490, L. 1983.

37-65-304. Examination fee — deposit of fee. (1) Applicants for examination shall pay in advance to the department a fee set by the board, commensurate with the cost, which shall defray the entire examination expense of the candidate. An applicant failing to pass the examination is entitled to reexamination at the next scheduled examination on payment of a reasonable fee prescribed by the board.

(2) The money received from the applicant shall be deposited in the state special revenue fund for the use of the board, subject to 37-1-101(6).

History: En. Sec. 8, Ch. 158, L. 1917; re-en. Sec. 3236, R.C.M. 1921; re-en. Sec. 3236, R.C.M. 1935; amd. Sec. 140, Ch. 147, L. 1963; amd. Sec. 1, Ch. 138, L. 1967; amd. Sec. 4, Ch. 439, L. 1973; amd. Sec. 27, Ch. 350, L. 1974; R.C.M. 1947, 66-108; amd. Sec. 7, Ch. 388, L. 1979; amd. Sec. 1, Ch. 277, L. 1983.

37-65-305. Repealed. Sec. 128, Ch. 429, L. 1995.

History: En. Sec. 3, Ch. 158, L. 1917; re-en. Sec. 3231, R.C.M. 1921; re-en. Sec. 3231, R.C.M. 1935; amd. Sec. 1, Ch. 149, L. 1957; amd. Sec. 2, Ch. 439, L. 1973; amd. Sec. 26, Ch. 350, L. 1974; amd. Sec. 2, Ch. 544, L. 1977; R.C.M. 1947, 66-103(part); amd. Sec. 6, Ch. 490, L. 1983.

37-65-306. Renewal — fee. A licensed architect in this state who desires to continue the practice of the profession shall, on or before the renewal date set by department rule:

(1) pay to the department a reasonable fee as prescribed by the board; and

(2) present evidence to the board of continued qualification for licensure.

History: En. Sec. 10, Ch. 158, L. 1917; re-en. Sec. 3238, R.C.M. 1921; re-en. Sec. 3238, R.C.M. 1935; amd. Sec. 3, Ch. 138, L. 1967; amd. Sec. 29, Ch. 350, L. 1974; amd. Sec. 5, Ch. 544, L. 1977; R.C.M. 1947, 66-110(1); amd. Sec. 8, Ch. 388, L. 1979; (2)En. Sec. 9, Ch. 388, L. 1979; amd. Sec. 119, Ch. 429, L. 1995; amd. Sec. 47, Ch. 492, L. 1997.

37-65-307. Deposit of license fees. All fees and moneys received by the department for licenses from practicing architects shall be deposited in the state special revenue fund for the use of the board, subject to 37-1-101(6).

History: En. Sec. 9, Ch. 158, L. 1917; re-en. Sec. 3237, R.C.M. 1921; re-en. Sec. 3237, R.C.M. 1935; amd. Sec. 141, Ch. 147, L. 1963; amd. Sec. 2, Ch. 138, L. 1967; amd. Sec. 18, Ch. 93, L. 1969; amd. Sec. 5, Ch. 439, L. 1973; amd. Sec. 28, Ch. 350, L. 1974; amd. Sec. 24, Ch. 439, L. 1975; R.C.M. 1947, 66-109(2); amd. Sec. 1, Ch. 277, L. 1983.

37-65-308. Seal of architect. Every licensed architect shall have a seal, the impression of which must contain the name of the architect, his or her place of business, and the words "Licensed Architect, State of Montana", with which he or she shall stamp all drawings and specifications issued from his or her office for use in this state.

History: En. Sec. 5, Ch. 158, L. 1917; re-en. Sec. 3233, R.C.M. 1921; re-en. Sec. 3233, R.C.M. 1935; R.C.M. 1947, 66-105.

Cross-References

Seal defined, 1-4-201.

Manner of making seal, 1-4-202.

37-65-309. Repealed. Sec. 12, Ch. 388, L. 1979.

History: En. Sec. 11, Ch. 158, L. 1917; re-en. Sec. 3239, R.C.M. 1921; re-en. Sec. 3239, R.C.M. 1935; amd. Sec. 30, Ch. 350, L. 1974; R.C.M. 1947, 66-111.

37-65-310 through 37-65-320 reserved.

37-65-321. Repealed. Sec. 128, Ch. 429, L. 1995.

History: En. Sec. 12, Ch. 158, L. 1917; re-en. Sec. 3240, R.C.M. 1921; re-en. Sec. 3240, R.C.M. 1935; amd. Sec. 3, Ch. 149, L. 1957; amd. Sec. 4, Ch. 138, L. 1967; amd. Sec. 6, Ch. 439, L. 1973; amd. Sec. 31, Ch. 350, L. 1974; R.C.M. 1947, 66-112; amd. Sec. 7, Ch. 490, L. 1983.

37-65-322. Penalty. Any person who uses the title "architect" or "licensed architect" or any other words, letters, figures, or device indicating or intending to imply that the person using the same is an architect or who shall engage in the practice of architecture within the meaning of this chapter or shall accept compensation for rendering architectural service without first having complied with the provisions of this chapter shall be deemed guilty of a misdemeanor and upon conviction shall be punished by a fine of not less than $500 or more than $1,000 or by imprisonment in the county jail for not less than 30 days or more than 6 months or by both such fine and imprisonment. Any person convicted a second time for any violation of this chapter shall be punished by both such fine and imprisonment. The district court shall have jurisdiction of all prosecutions brought hereunder.

History: En. Sec. 6, Ch. 158, L. 1917; re-en. Sec. 3234, R.C.M. 1921; re-en. Sec. 3234, R.C.M. 1935; amd. Sec. 4, Ch. 149, L. 1957; amd. Sec. 3, Ch. 544, L. 1977; R.C.M. 1947, 66-106(1); amd. Sec. 8, Ch. 490, L. 1983.

37-65-323. Injunction. Whenever the board of architects has reasonable cause to believe that a person is violating any provision of this chapter or rule of the board, it may, in addition to the remedies provided in 37-65-322 and without prejudice thereto, bring an action in the district court for the county in which the violation is occurring to enjoin such person from continuing to engage in such violation or from doing any act in furtherance thereof.

History: En. Sec. 6, Ch. 158, L. 1917; re-en. Sec. 3234, R.C.M. 1921; re-en. Sec. 3234, R.C.M. 1935; amd. Sec. 4, Ch. 149, L. 1957; amd. Sec. 3, Ch. 544, L. 1977; R.C.M. 1947, 66-106(2).

Cross-References

Issuance of injunctions on nonjudicial days, 3-1-302, 3-5-302.

Contempts, Title 3, ch. 1, part 5.

Injunctions, Rule 65, M.R.Civ.P. (see Title 25, ch. 20); Title 27, ch. 19.

Affidavits, Title 26, ch. 1, part 10.

Disciplinary authority of boards — injunctions, 37-1-136.

CHAPTER 66

LANDSCAPE ARCHITECTURE

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37-66-103. Definitions.
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37-66-308. Display of license — seal of landscape architect.
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37-66-321. Repealed.
37-66-322. Penalty.
37-66-323. Repealed.

Part 1
General

37-66-101. Short title. This chapter shall be known and cited as the "Landscape Architecture Registration and Licensing Act".

History: En. 66-3801 by Sec. 1, Ch. 476, L. 1975; R.C.M. 1947, 66-3801; amd. Sec. 4, Ch. 325, L. 1979.

37-66-102. Purpose. The purpose of this chapter is to safeguard life, health, property, and to promote the public welfare by requiring that only properly qualified persons shall be licensed to practice landscape architecture in this state.

History: En. 66-3802 by Sec. 2, Ch. 476, L. 1975; R.C.M. 1947, 66-3802.

37-66-103. Definitions. As used in this chapter, the following definitions apply:

(1) "Board" means the board of landscape architects provided for in 2-15-1872.

(2) "Department" means the department of commerce provided for in Title 2, chapter 15, part 18.

(3) "Landscape architect" means a person who holds a certificate to practice landscape architecture in the state of Montana under the provisions of this chapter.

(4) "Landscape architecture" means performing services in conjunction with all aspects of the planning and design of the exterior environment for human use and environmental protection. It includes regional planning of natural resources, urban and rural planning and design, institutional design, park and recreation planning and design, and the preparation of project master plans. It is the design discipline specifically oriented to addressing the problems involved in adapting man's uses of land to the characteristics of the exterior environment both functionally and aesthetically. It includes the preparation of contract documents, construction specifications, construction cost estimates, and project contracts. It includes contract negotiations, project management, and construction management. The term does not include the design of

structures or facilities with separate and self-contained purposes that are ordinarily included in the practice of engineering or architecture and does not include the making of land surveys or final land plats for official approval or recording.

History: **En. 66-3803 by Sec. 3, Ch. 476, L. 1975; R.C.M. 1947, 66-3803; amd. Sec. 24, Ch. 22, L. 1979; amd. Sec. 5, Ch. 325, L. 1979; amd. Sec. 3, Ch. 274, L. 1981.**

37-66-104. Acts declared unlawful. It shall be unlawful for any person to:

(1) offer to practice or hold himself out as entitled to practice landscape architecture unless duly licensed and registered under this chapter;

(2) present as his own the license of another;

(3) give false or forged evidence to the board or any member thereof in obtaining a license;

(4) falsely impersonate any other practitioner of like or different name;

(5) otherwise violate any of the provisions of this chapter.

History: **En. 66-3812 by Sec. 14, Ch. 476, L. 1975; R.C.M. 1947, 66-3812(1).**

37-66-105. Exemptions. (1) None of the provisions of this chapter prevent employees of those lawfully practicing as landscape architects from acting under the instruction, control, or supervision of their employers.

(2) None of the provisions of this chapter apply to any business conducted in this state by any horticulturist, nurseryman, or landscape nurseryman, plantsman, gardener, landscape gardener, landscape designer, landscape artist, landscape contractor, or land use planner, as these terms are generally used. However, no such person shall use the title "landscape architect", "landscape architecture", or any description tending to convey the impression that he is a licensed landscape architect unless he is licensed as provided in this chapter.

(3) This chapter does not apply to architects, professional engineers, and professional land surveyors licensed to practice their respective professions.

(4) None of the provisions of this chapter shall apply to any person performing any of the services mentioned in this chapter upon his own property.

(5) None of the provisions of this chapter shall require the hiring of a landscape architect.

History: **En. 66-3808 by Sec. 10, Ch. 476, L. 1975; R.C.M. 1947, 66-3808; amd. Sec. 52, Ch. 83, L. 1989.**

Cross-References

Architects, Title 37, ch. 65.

Engineers and land surveyors, Title 37, ch. 67.

Part 2

Board of Landscape Architects

Part Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

Contested case procedure, Title 2, ch. 6.

Allocation of boards for administrative purposes, 2-15-121.

Quasi-judicial boards, 2-15-124.

Board established, 2-15-1872.

Duties of Department, Director, and boards, Title 37, ch. 1, part 1.

37-66-201. Organization — compensation. (1) At its first meeting of every calendar year, the board shall elect from among its members a chairman, who may appoint a secretary. The secretary may or may not be a member of the board.

(2) The members of the board are entitled to receive compensation and travel expenses as provided in 37-1-133.

History: En. 82A-1602.30 by Sec. 8, Ch. 476, L. 1975; amd. Sec. 24, Ch. 453, L. 1977; R.C.M. 1947, 82A-1602.30(5); amd. Sec. 6, Ch. 325, L. 1979; amd. Sec. 31, Ch. 474, L. 1981; amd. Sec. 1, Ch. 89, L. 1989.

37-66-202. Rulemaking power. The board may promulgate such rules, including setting of fees, as are necessary in the performance of its duties and may hear contested cases arising under this chapter.

History: En. 82A-1602.30 by Sec. 8, Ch. 476, L. 1975; amd. Sec. 24, Ch. 453, L. 1977; R.C.M. 1947, 82A-1602.30(4).

Part 3
Licensing

Part Cross-References

Licensing to follow contested case procedure, 2-4-631.

Suspension of license fees for persons in military service, 10-1-605.

Duty of Department to administer and grade examinations, 37-1-101.

Duty of Board to adopt and enforce licensing and certification rules, 37-1-131.

Licensing boards to establish fees commensurate with costs, 37-1-134.

Licensure of criminal offenders, Title 37, ch. 1, part 2.

Nondiscrimination in licensing, 49-3-204.

37-66-301. License required. In order to safeguard human health and property and to promote the public welfare, any person in either public or private capacity practicing or offering to practice landscape architecture for hire shall be required to submit evidence that he is qualified to so practice and shall be registered under the provisions of this chapter.

History: En. 66-3804 by Sec. 4, Ch. 476, L. 1975; R.C.M. 1947, 66-3804.

37-66-302. Illegal use of title. No person may use the designation "landscape architect" or "landscape architecture" or advertise any title or description tending to convey the impression that he is a landscape architect or practicing landscape architecture unless such person is a landscape architect licensed with the board.

History: En. 66-3810 by Sec. 12, Ch. 476, L. 1975; R.C.M. 1947, 66-3810(part).

37-66-303. Licensing restricted to individuals — partnerships — local business licensing. (1) Certificates of licensing may be issued to natural persons only, but nothing contained in this chapter prevents a duly licensed landscape architect from performing his services for a corporation, firm, partnership, or association.

(2) Each partner in a partnership of landscape architects shall be licensed to practice landscape architecture. Subject to this requirement, a partnership of landscape architects may use a partnership name if the name consists of:

(a) the names of two or more landscape architects; or

(b) the names of one or more landscape architects and one or more professional engineers, architects, or planners.

(3) A person applying to the licensing official of any county or city for a business license to practice landscape architecture shall, at the time of application, exhibit to the licensing official satisfactory evidence under the seal of the board and the hand of its secretary that the applicant possesses a current registration with the board. The license may not be granted until such evidence is presented.

History: En. 66-3809 by Sec. 11, Ch. 476, L. 1975; amd. Sec. 33, Ch. 101, L. 1977; R.C.M. 1947, 66-3809.

37-66-304. Qualifications not required. Each applicant must be admitted to the examination without prerequisite qualifications.

History: En. 66-3805 by Sec. 5, Ch. 476, L. 1975; R.C.M. 1947, 66-3805; amd. Sec. 7, Ch. 325, L. 1979.

37-66-305. Examinations. (1) Examinations for licensure shall be given by the board at least once each year.

(2) Each applicant for licensure as a landscape architect is required to establish by examination his competency to practice the profession of landscape architecture.

(3) The examination given must be the uniform national examination prescribed by the council of landscape architectural boards.

History: En. 66-3806 by Sec. 6, Ch. 476, L. 1975; R.C.M. 1947, 66-3806; amd. Sec. 8, Ch. 325, L. 1979.

37-66-306. Repealed. Sec. 128, Ch. 429, L. 1995.

History: En. 66-3807 by Sec. 9, Ch. 476, L. 1975; R.C.M. 1947, 66-3807(4); amd. Sec. 9, Ch. 325, L. 1979.

37-66-307. Renewal — withdrawal — deposit of fees. (1) Certification of licensure or renewal of registration expires on the date set by department rule. Renewal may be effected on or before the renewal date by payment to the department of the required fee. The board shall issue current renewal registration to each landscape architect promptly upon payment of the renewal registration fee.

(2) Any registrant in good standing, upon ceasing to practice landscape architecture, shall give written notice to the board, and the board shall suspend the license. The person may resume practice upon payment of the then-current fee and upon approval by the board.

(3) All fees received under the provisions of this chapter must be deposited in the state special revenue fund by the department. The money collected must be used by the department to carry out the purpose, duties, and responsibilities set forth in this chapter, subject to 37-1-101(6).

History: En. 66-3807 by Sec. 9, Ch. 476, L. 1975; R.C.M. 1947, 66-3807(1) thru (3); amd. Sec. 10, Ch. 325, L. 1979; amd. Sec. 1, Ch. 277, L. 1983; amd. Sec. 120, Ch. 429, L. 1995; amd. Sec. 48, Ch. 492, L. 1997.

37-66-308. Display of license — seal of landscape architect. (1) Each holder of a license shall display it in his principal office, place of business, or place of employment.

(2) Each landscape architect shall have a seal approved by the board, which shall contain the name of the landscape architect and the words "Licensed Landscape Architect, State of Montana" and such other words or figures as the board considers necessary. All drawings and title pages of specifications prepared by such landscape architect or under the supervision of such

landscape architect shall be stamped with his seal. Nothing contained herein shall be construed to permit the seal of a landscape architect to serve as a substitute for the seal of a licensed architect, a licensed professional engineer, or a licensed professional land surveyor.

History: En. 66-3810 by Sec. 12, Ch. 476, L. 1975; R.C.M. 1947, 66-3810(part); amd. Sec. 53, Ch. 83, L. 1989.

Cross-References

Seal defined, 1-4-201.

Manner of making seal, 1-4-202.

37-66-309 through 37-66-320 reserved.

37-66-321. Repealed. Sec. 128, Ch. 429, L. 1995.

History: En. 66-3811 by Sec. 13, Ch. 476, L. 1975; R.C.M. 1947, 66-3811.

37-66-322. Penalty. A person convicted of violating any of the provisions of this chapter shall be fined not to exceed $500. Each violation is considered a separate offense for purposes of this section.

History: En. 66-3812 by Sec. 14, Ch. 476, L. 1975; R.C.M. 1947, 66-3812(2).

37-66-323. Repealed. Sec. 128, Ch. 429, L. 1995.

History: En. 66-3813 by Sec. 15, Ch. 476, L. 1975; R.C.M. 1947, 66-3813.

CHAPTER 67

ENGINEERS AND LAND SURVEYORS

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37-67-331. Revocation, suspension, or refusal to renew certificate — grounds — procedure — reinstatement.
37-67-332. Violations — penalties — enforcement.

Chapter Cross-References

Construction contracts, Title 18, ch. 2.

Procurement of architectural, engineering, and land surveying services by governmental entities, Title 18, ch. 8, part 2.

Limitations on actions arising out of work on improvements to real property, 27-2-208.

Professional service corporations, Title 35, ch. 4.

Exemption of engineers from licensure as sanitarian, 37-40-102.

Building construction standards, Title 50, ch. 60.

Professional land surveyor — entry on land — trespass exception, 70-16-111.

Corner Recordation Act of Montana — surveys and coordinates, Title 70, ch. 22.

Surveying — actions arising from, 70-28-113.

Part 1
General

37-67-101. Definitions. As used in this chapter, the following definitions apply:

(1) "Board" means the board of professional engineers and professional land surveyors provided for in 2-15-1873.

(2) "Department" means the department of commerce provided for in Title 2, chapter 15, part 18.

(3) "Engineer intern" means a person who complies with the requirements for education, experience, and character and has passed an examination in the fundamental engineering subjects, as provided in this chapter.

(4) "Land surveyor intern" means a person who has qualified for, taken, and passed an examination on the basic disciplines of land surveying as provided in this chapter.

(5) (a) "Practice of engineering" means:

(i) any service or creative work the adequate performance of which requires engineering education, training, and experience in the application of special knowledge of the mathematical, physical, and engineering sciences to the services or creative work as consultation, investigation, evaluation, planning and design of engineering works and systems, planning the use of water, teaching of advanced engineering subjects, engineering surveys, and the inspection of construction for the purpose of ensuring compliance with drawings and specifications;

(ii) any of the functions described in subsection (5)(a)(i) that embrace the services or work, either public or private, in connection with any utilities, structures, buildings, machines, equipment, processes, work systems, projects, and industrial or consumer products or equipment of mechanical, electrical, hydraulic, pneumatic, or thermal nature insofar as they involve safeguarding life, health, or property.

(b) The term includes other professional services necessary to the planning, progress, and completion of any engineering services.

(c) The term does not include the work ordinarily performed by persons who operate or maintain machinery or equipment, communication lines, signal circuits, electric powerlines, or pipelines.

(6) "Practice of land surveying" means any service or work, the performance of which requires the application of special knowledge of the principles of mathematics, physical sciences, applied sciences, and:

(a) the principles of property boundary law to the recovery and preservation of evidence pertaining to earlier land surveys;

(b) teaching of land surveying subjects;

(c) measurement and allocation of lines, angles, elevations, and coordinate systems;

(d) location of natural and constructed features in the air, on the surface of the earth, within underground workings, and on the beds of bodies of water, including work for the determination of areas and volumes;

(e) monumenting of property boundaries;

(f) platting and layout of lands and the subdivisions of land, including the alignment and grades of streets and roads in subdivisions; and

(g) preparation and perpetuation of maps, plats, field note records, and property descriptions.

(7) "Professional engineer" means a person who, by reason of special knowledge and use of the mathematical, physical, and engineering sciences and the principles and methods of engineering analysis and design acquired by engineering education and engineering experience, is qualified to practice engineering and who has been registered and licensed as a professional engineer by the board.

(8) "Professional land surveyor" means a person who:

(a) has been registered and licensed as a land surveyor by the board;

(b) is a professional specialist in the technique, analysis, and application of measuring land;

(c) is skilled and educated in the principles of mathematically related physical and applied sciences, relevant requirements of law for adequate evidence, and all requisites to the surveying of real property; and

(d) is engaged in the practice of land surveying as defined in this section.

(9) "Responsible charge" means direct charge and control and personal supervision either of engineering work or of land surveying. Only a professional engineer or a professional land surveyor may legally assume responsible charge under this chapter.

History: En. Sec. 2, Ch. 366, L. 1975; R.C.M. 1947, 66-2350(part); amd. Sec. 25, Ch. 22, L. 1979; amd. Sec. 3, Ch. 274, L. 1981; amd. Sec. 2, Ch. 553, L. 1985; amd. Sec. 1, Ch. 108, L. 1995.

37-67-102. Representation as practitioner to be construed as practice. (1) A person shall be construed to practice or offer to practice engineering, within the meaning and intent of this chapter, who practices any branch of the profession of engineering or who by verbal claim, sign, advertisement, letterhead, card, or in any other way represents himself to be a professional engineer or through the use of some other title implies that he is a professional engineer or that he is registered under this chapter or who holds himself out as able to perform or who does perform any engineering service or work or any other service designated by the practitioner which is recognized as engineering.

(2) Any person shall be construed to practice or offer to practice land surveying, within the meaning and intent of this chapter, who engages in land surveying or who by verbal claim, sign, letterhead, card, or in any other way represents himself to be a professional land surveyor or through the use of some other title implies that he is a professional land surveyor or who represents himself as able to perform or who does perform any land surveying service or work or any other service designated by the practitioner which is recognized as land surveying.

History: En. 66-2369 by Sec. 17, Ch. 366, L. 1975; R.C.M. 1947, 66-2369; amd. Sec. 3, Ch. 553, L. 1985.

37-67-103. Exemptions. The following are exempt from coverage under this chapter:

(1) the practice of any other legally recognized professions or trades;

(2) the mere execution of work by a contractor, as distinguished from its planning or design or the supervision of the construction of work as a foreman or superintendent;

(3) the work of an employee or a subordinate of a person holding a certificate of registration under this chapter or an employee of a person practicing lawfully under this chapter, provided such work does not include final engineering or land surveying designs or decisions and is done under the direct supervision of a person holding a certificate of registration under this chapter or a person practicing lawfully under this chapter;

(4) the practice of professional engineering by licensed architects where the practice is purely incidental to their practice of architecture.

History: En. 66-2367 by Sec. 15, Ch. 366, L. 1975; R.C.M. 1947, 66-2367; amd. Sec. 4, Ch. 553, L. 1985.

Part 2

Board of Professional Engineers and Professional Land Surveyors

Part Cross-References

Right to know, Art. II, sec. 9, Mont. Const.
Seal defined, 1-4-201.
Open meetings, Title 2, ch. 3, part 2.
Meeting defined, 2-3-202.
Allocation of boards for administrative purposes, 2-15-121.
Quasi-judicial boards, 2-15-124.
Board established, 2-15-1873.
Duties of Department, Director, and boards, Title 37, ch. 1, part 1.

37-67-201. Organization — meetings — quorum — seal. (1) The board shall hold at least two regular meetings each year. Special meetings shall be held at such time as the rules of the board may provide. Notice of all meetings shall be given in such manner as the rules may provide.

(2) The board shall elect annually the following officers: a chairman, a vice-chairman, and a secretary.

(3) A quorum of the board shall consist of not less than five members.

(4) The board shall adopt and have an official seal.

History: (1) thru (3)En. Sec. 8, Ch. 150, L. 1957; Sec. 66-2331, R.C.M. 1947; redes. 66-2352 by Sec. 3, Ch. 366, L. 1975; amd. Sec. 1, Ch. 317, L. 1977; Sec. 66-2352, R.C.M.

1947; (4)En. Sec. 9, Ch. 150, L. 1957; amd. Sec. 3, Ch. 282, L. 1969; Sec. 66-2332, R.C.M. 1947; redes. 66-2353 by Sec. 3, Ch. 366, L. 1975; Sec. 66-2353, R.C.M. 1947; R.C.M. 1947, 66-2352, 66-2353(part); amd. Sec. 4, Ch. 408, L. 1979.

Cross-References

Disrupting meeting as disorderly conduct, 45-8-101.

37-67-202. Rulemaking. The board may adopt rules, including rules of procedure, reasonably necessary for the proper performance of its duties and the regulation of the proceedings before it.

History: En. Sec. 9, Ch. 150, L. 1957; amd. Sec. 3, Ch. 282, L. 1969; Sec. 66-2332, R.C.M. 1947; redes. 66-2353 by Sec. 3, Ch. 366, L. 1975; R.C.M. 1947, 66-2353(part); amd. Sec. 121, Ch. 429, L. 1995.

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

Power of hearings officer to issue subpoenas, 2-4-611.

Allocation for administrative purposes only, 2-15-121.

Quasi-judicial boards, 2-15-124.

Subpoenas, Rule 45, M.R.Civ.P. (see Title 25, ch. 20); Title 26, ch. 2, part 1.

37-67-203. Compensation of board members — expenses. Each member of the board shall receive compensation and travel expenses as provided for in 37-1-133.

History: En. Sec. 6, Ch. 150, L. 1957; Sec. 66-2329, R.C.M. 1947; amd. Sec. 40, Ch. 439, L. 1975; redes. 66-2351 by Sec. 3, Ch. 366, L. 1975; R.C.M. 1947, 66-2351; amd. Sec. 32, Ch. 474, L. 1981.

37-67-204. Record of proceedings — register of applicants. (1) The department shall keep a record of its proceedings and a register of the board's proceedings.

(2) The department shall keep a register of applicants for registration, which shall show:

(a) the name, age, and residence of each applicant;
(b) the date of the application;
(c) the place of business of the applicant;
(d) his educational and other qualifications;
(e) the branch or branches of engineering in which the applicant qualified;
(f) whether an examination was required;
(g) whether the applicant was rejected;
(h) whether a certificate of registration was granted;
(i) the date of the action of the board; and
(j) other information considered necessary by the board.

(3) The records of the department are prima facie evidence of the proceedings of the board, and a transcript thereof, certified by the department, is admissible in evidence as if the original were produced.

History: En. Sec. 11, Ch. 150, L. 1957; Sec. 66-2334, R.C.M. 1947; amd. Sec. 27, Ch. 93, L. 1969; amd. Sec. 217, Ch. 350, L. 1974; redes. 66-2355 by Sec. 3, Ch. 366, L. 1975; R.C.M. 1947, 66-2355.

Cross-References

Public records, Title 2, ch. 6.

Preservation of records, Title 22, ch. 3, part 2.

Contents of writings, recordings, and photographs, Art. X, M.R.Ev. (see Title 26, ch. 10).

Duty of Department to keep records, 37-1-101.

Part 3
Licensing

Part Cross-References

Oath defined, 1-1-201.

Proof of execution, Title 1, ch. 5, part 3.

Power of notary to take acknowledgments, 1-5-416.

Licensing to follow contested case procedure, 2-4-631.

Suspension of license fees for persons in military service, 10-1-605.

Recognition of out-of-state licenses during disaster or emergency, 10-3-204.

Duty of Department to administer and grade examinations and to investigate unprofessional conduct, 37-1-101.

Reporting disciplinary actions against licensees, 37-1-105.

Duty of Board to adopt and enforce licensing and certification rules, 37-1-131.

Licensing boards to establish fees commensurate with costs, 37-1-134.

Licensing investigation and review — record access, 37-1-135.

Grounds for disciplinary action as grounds for license denial — conditions to new licenses, 37-1-137.

Licensure of criminal offenders, Title 37, ch. 1, part 2.

Perjury, 45-7-201.

False swearing, 45-7-202.

Nondiscrimination in licensing, 49-3-204.

37-67-301. License required to practice or offer to practice. In order to safeguard life, health, and property and to promote the public welfare, any person in either public or private capacity practicing or offering to practice engineering or land surveying shall hereafter be required to submit evidence that he is qualified so to practice and shall be registered as hereinafter provided. From and after January 1, 1958, it shall be unlawful for any person to practice or to offer to practice in this state engineering or land surveying, as defined in this chapter, or to use in connection with his name or otherwise assume, use, or advertise any title or description tending to convey the impression that he is a professional engineer or a professional land surveyor unless such person has been duly registered under the provisions of this chapter.

History: En. Sec. 1, Ch. 150, L. 1957; Sec. 66-2324, R.C.M. 1947; redes. 66-2349 by Sec. 3, Ch. 366, L. 1975; R.C.M. 1947, 66-2349; amd. Sec. 6, Ch. 553, L. 1985.

37-67-302. Practice without a license a public nuisance. The practice of engineering or land surveying, as defined herein, without a license is hereby declared to be a public nuisance.

History: En. Sec. 9, Ch. 150, L. 1957; amd. Sec. 3, Ch. 282, L. 1969; Sec. 66-2332, R.C.M. 1947; redes. 66-2353 by Sec. 3, Ch. 366, L. 1975; R.C.M. 1947, 66-2353(part).

Cross-References

Nuisances, Title 27, ch. 30.

37-67-303. Application — contents — fees. (1) Applications for registration must be on forms prescribed by the board and furnished by the department, must contain statements made under oath showing the applicant's education and a detailed summary of the applicant's technical work, and must contain the required references.

(2) The fee for engineer intern is as prescribed by the board, must accompany the application, and must include the cost of one examination. No additional fee is required for issuance of a certificate.

(3) The application fee for registration as a professional engineer is as prescribed by the board for those holding an engineer intern certificate validated for Montana. For those holding a valid engineer intern certificate from some other state, the application fee is as prescribed by the board, which

includes cost of verification of engineer intern certification and one examination. Upon approval of application for registration as a professional engineer, an additional fee equal to the existing renewal fee must be paid before issuance of a certificate as a professional engineer.

(4) The department, subject to approval by the board, may, on approval of the application, payment of a fee as prescribed by the board, and payment of an additional fee equal to the appropriate renewal fee, issue a certificate of registration as a professional engineer to a person who holds a certificate of qualification or registration issued to the person by the committee on national engineering certification of the national council of examiners for engineering and surveying or by a state, territory, or possession of the United States or by another country if the applicant's qualifications meet the requirements of this chapter and the rules of the board.

(5) The fee for land surveyor intern is as prescribed by the board, which must accompany the application and must include the cost of one examination. No additional fee is required for issuance of a certificate.

(6) The application fee for registration as a professional land surveyor is as prescribed by the board for those holding a land surveyor intern certificate validated in Montana. For those holding a valid land surveyor intern certificate from some other state, the application fee is as prescribed by the board, which includes cost of verification of the certification. Upon approval of application for registration as a professional land surveyor, an additional fee equal to the existing renewal fee must be paid before issuance of a certificate as a professional land surveyor.

(7) The application fee for registration as both a professional engineer and professional land surveyor is as prescribed by the board for those holding engineer intern and land surveyor intern certificates validated in Montana. For those holding valid engineer intern and land surveyor intern certificates from another jurisdiction, the application fee is as prescribed by the board. The fee must accompany the application. Upon approval of application for registration as a professional engineer and professional land surveyor, an additional fee equal to the existing renewal fee must be paid before issuance of a certificate.

(8) If the board denies issuance of a certificate of registration to any applicant, the initial fee deposited must be retained as an application fee.

History: **En. Sec. 14, Ch. 150, L. 1957; Sec. 66-2337, R.C.M. 1947; amd. Sec. 5, Ch. 282, L. 1969; amd. Sec. 2, Ch. 364, L. 1971; amd. Sec. 219, Ch. 350, L. 1974; amd. Sec. 7, Ch. 215, L. 1975; redes. 66-2358 by Sec. 6, Ch. 366, L. 1975; amd. Sec. 21, Ch. 101, L. 1977; amd. Sec. 3, Ch. 317, L. 1977; R.C.M. 1947, 66-2358(1) thru (8); amd. Sec. 5, Ch. 408, L. 1979; amd. Sec. 66, Ch. 345, L. 1981; amd. Sec. 1, Ch. 489, L. 1981; amd. Sec. 7, Ch. 553, L. 1985; amd. Sec. 1, Ch. 72, L. 1987; amd. Sec. 2, Ch. 108, L. 1995.**

37-67-304. Local government not to impose fee or examination. A registration or license fee or examination may not be imposed by a local government on a person registered under this chapter to practice engineering or land surveying.

History: **En. Sec. 14, Ch. 150, L. 1957; Sec. 66-2337, R.C.M. 1947; amd. Sec. 5, Ch. 282, L. 1969; amd. Sec. 2, Ch. 364, L. 1971; amd. Sec. 219, Ch. 350, L. 1974; amd. Sec. 7, Ch. 215, L. 1975; redes. 66-2358 by Sec. 6, Ch. 366, L. 1975; amd. Sec. 21, Ch. 101, L. 1977; amd. Sec. 3, Ch. 317, L. 1977; R.C.M. 1947, 66-2358(9); amd. Sec. 3, Ch. 108, L. 1995.**

37-67-305. General qualifications of applicants for registration as professional engineer or engineer intern. To be eligible for admission to an examination for professional engineer or engineer intern, an applicant must be of good character and reputation. The applicant must submit five references with the application for registration as a professional engineer. Three references must be from professional engineers with personal knowledge of the applicant's engineering experience. In the case of an application for certification as an engineer intern, the applicant shall submit three character references.

History: En. 66-2357 by Sec. 5, Ch. 366, L. 1975; R.C.M. 1947, 66-2357(part); amd. Sec. 4, Ch. 108, L. 1995.

37-67-306. Qualifications of applicant for registration as professional engineer. The following is considered minimum evidence satisfactory to the board that the applicant is qualified for registration as a professional engineer:

(1) A graduate of an engineering or engineering technology curriculum of 4 years or more approved by the board as being of satisfactory standing, with a specific record of an additional 4 years or more of progressive experience on engineering projects of a grade and character that indicate to the board that the applicant may be competent to practice engineering, must be admitted to an 8-hour written examination in the fundamentals of engineering and an 8-hour written examination in the principles and practices of engineering. Upon passing the examinations, the applicant must be granted a certificate of registration to practice engineering in this state if the applicant is otherwise qualified.

(2) A graduate of a related science curriculum of 4 years or more, other than engineering or engineering technology, with a specific record of 8 years or more of progressive experience on engineering projects of a grade and character that indicate to the board that the applicant may be competent to practice engineering, may be admitted to an 8-hour written examination in the fundamentals of engineering and an 8-hour written examination in the principles and practices of engineering. Upon passing the examinations, the applicant must be granted a certificate of registration to practice engineering in this state if the applicant is otherwise qualified.

(3) A graduate of an engineering or related science curriculum of 4 years or more with a specific record of 20 years or more of progressive experience on engineering projects, of which at least 10 years have been in charge of important engineering projects, of a grade and character that indicate to the board that the applicant may be competent to practice engineering must be admitted to an 8-hour written examination in the principles and practices of engineering. Upon passing the examination, the applicant must be granted a certificate of registration to practice engineering in this state if the applicant is otherwise qualified.

(4) Teaching engineering in a college or university offering an approved engineering curriculum of 4 years or more may be considered as engineering experience in these requirements if research, product development, or consulting has been a concurrent activity.

(5) A person who holds a doctorate degree in engineering from an institution with an engineering program approved by the board and the engineering accreditation commission of the accreditation board for engineering and technology or the Canadian engineering accreditation board

and who provides a specific record of at least 4 years of progressive experience on engineering projects of a grade and character that indicate to the board that the applicant may be competent to practice engineering must be admitted to an 8-hour written examination in the principles and practices of engineering. Upon passing the examination, the applicant must be issued a certificate of registration to practice engineering in this state if the applicant is otherwise qualified.

History: En. 66-2357 by Sec. 5, Ch. 366, L. 1975; R.C.M. 1947, 66-2357(part); amd. Sec. 2, Ch. 59, L. 1985; amd. Sec. 1, Ch. 107, L. 1995.

37-67-307. Qualifications of applicant for registration as engineer intern. The following must be considered as minimum evidence that the applicant is qualified for certification as an engineer intern:

(1) A graduate of an engineering or engineering technology curriculum of 4 years or more, approved by the board as being of satisfactory standing, must be admitted to an 8-hour written examination in the fundamentals of engineering. Upon passing the examination, the applicant must be certified or enrolled as an engineer intern if the applicant is otherwise qualified.

(2) A graduate of a related science curriculum of 4 years or more, other than engineering or engineering technology, with a specific record of 4 or more years of progressive experience on engineering projects of a grade and character satisfactory to the board must be admitted to an 8-hour written examination in the fundamentals of engineering. Upon passing the examination, the applicant must be certified or enrolled as an engineer intern if the applicant is otherwise qualified.

History: En. 66-2357 by Sec. 5, Ch. 366, L. 1975; R.C.M. 1947, 66-2357(1)(b); amd. Sec. 1, Ch. 59, L. 1985; amd. Sec. 5, Ch. 108, L. 1995.

37-67-308. General qualifications of applicants for registration as professional land surveyor or land surveyor intern. (1) To be eligible for admission to an examination for professional land surveyor or land surveyor intern, an applicant must be of good character and reputation. The applicant shall submit five references with the application for registration as a professional land surveyor. Three of the references must be from professional land surveyors having personal knowledge of the applicant's land surveying experience. In the case of an application for certification as a land surveyor intern, the applicant shall submit three references, one of whom must be from a professional land surveyor having personal knowledge of the applicant's land surveying experience.

(2) The evaluation of a land surveyor applicant's qualifications involves a consideration of the applicant's education, technical and land surveying experience, exhibits of land surveying projects which the applicant has been in charge of, recommendations by references, and a reviewing of these categories. The board may require an interview if it considers one necessary.

History: En. 66-2357 by Sec. 5, Ch. 366, L. 1975; R.C.M. 1947, 66-2357(part); amd. Sec. 2, Ch. 489, L. 1981; amd. Sec. 1, Ch. 354, L. 1983; amd. Sec. 8, Ch. 553, L. 1985; amd. Sec. 2, Ch. 72, L. 1987; amd. Sec. 6, Ch. 108, L. 1995.

37-67-309. Qualifications of applicant for registration as professional land surveyor. One of the following shall be considered as minimum evidence to the board that the applicant is qualified for registration as a professional land surveyor:

(1) have a bachelor of science degree in a board-approved curriculum that must contain a minimum of 40 quarter credit hours in surveying techniques, principles, and practices, and present evidence satisfactory to the board that, in addition thereto, he has had at least 4 years of combined office and field experience in land surveying, with a minimum of 3 years of progressive experience on land surveying projects under the direct supervision of a professional land surveyor, and have passed the examinations as required by the board;

(2) have 2 years of formal education in a board-approved curriculum above high school level with at least 90 quarter credit hours that must contain a minimum of 40 quarter credit hours in surveying techniques, principles, and practices, or equivalent semester hours passed, or the equivalent approved by the board, and present evidence satisfactory to the board that, in addition thereto, he has had at least 6 years of combined office and field experience in land surveying satisfactory to the board, with a minimum of 4 years of progressive experience on land surveying projects under the direct supervision of a professional land surveyor, and have passed the examinations as required by the board;

(3) have a bachelor of science degree in a board-approved curriculum and present evidence satisfactory to the board that, in addition thereto, he has had at least 6 years of combined office and field experience in land surveying, with a minimum of 4 years of progressive experience on land surveying projects under the direct supervision of a professional land surveyor, and have passed the examinations as required by the board; or

(4) present evidence satisfactory to the board that he has had at least 10 years of combined office and field experience in land surveying satisfactory to the board, with a minimum of 6 years of progressive experience on land surveying projects under the direct supervision of a professional land surveyor, and has passed the examinations as required by the board.

History: En. 66-2357 by Sec. 5, Ch. 366, L. 1975; R.C.M. 1947, 66-2357(part); amd. Sec. 2, Ch. 354, L. 1983; amd. Sec. 9, Ch. 553, L. 1985; amd. Sec. 3, Ch. 72, L. 1987.

37-67-310. Qualifications of applicant for registration as land surveyor intern. To qualify for registration as a land surveyor intern, an applicant must present as evidence to the board at least one of the following:

(1) a bachelor of science degree in a board-approved curriculum that must contain a minimum of 27 semester or 40 quarter credit hours in surveying techniques, principles, and practices and evidence of having passed the written examinations required by the board;

(2) at least 2 years of formal education in an approved curriculum that must contain a minimum of 27 semester or 40 quarter credit hours in surveying techniques, principles, and practices, above high school level, with at least 60 semester or 90 quarter credit hours or equivalent semester hours passed, or the equivalent approved by the board, and evidence of having passed the written examinations required by the board;

(3) a bachelor of science degree in a board-approved curriculum and evidence satisfactory to the board that, in addition, the applicant has had at least 2 years of combined office and field experience in land surveying, with a minimum of 1 year in charge of land surveying projects under the supervision

of a professional land surveyor, and evidence of having passed the written examinations required by the board; or

(4) evidence satisfactory to the board that the applicant has had at least 6 years of combined office and field experience in land surveying, with a minimum of 4 years of experience in charge of land surveying projects, under the supervision of a professional land surveyor, and evidence of having passed the examinations required by the board.

History: En. 66-2357 by Sec. 5, Ch. 366, L. 1975; R.C.M. 1947, 66-2357(2)(b); amd. Sec. 3, Ch. 354, L. 1983; amd. Sec. 10, Ch. 553, L. 1985; amd. Sec. 4, Ch. 72, L. 1987; amd. Sec. 7, Ch. 108, L. 1995.

37-67-311. Examinations. Examination requirements are as follows:

(1) The examinations must be held at times and places as the board directs. The board shall determine the acceptable grade on examinations.

(2) Written examinations may be taken only after the applicant has met the other minimum requirements as given in 37-67-305 through 37-67-310 and has been approved by the board for admission to the examinations as follows:

(a) The examination on engineering fundamentals consists of an 8-hour examination on the fundamentals of engineering. Passing the examination qualifies the examinee for an engineer intern certificate if the examinee has met all other requirements for certification required by this chapter.

(b) The examination on principles and practice of engineering consists of an 8-hour examination on applied engineering. Passing this examination qualifies the examinee for registration as a professional engineer if the examinee has met the other requirements for registration required by this chapter.

(c) The examinations for land surveyor intern consist of two 4-hour examinations, designated as parts I and II, on the basic disciplines of land surveying. Passing these examinations qualifies the examinee for a land surveyor intern certificate the examinee has met all other requirements for certificates required by this chapter.

(d) The requirements and examinations for professional land surveyor consist of being a land surveyor intern, of two examinations, designated as parts III and IV, on the applied disciplines of land surveying, and of an examination specifically related to land surveying in Montana. Passing these examinations qualifies the examinee for registration as a professional land surveyor if the examinee has met the other requirements for registration required by this chapter.

(3) A candidate failing one examination may apply for reexamination, which may be granted upon payment of a fee established by the board. Before readmission to the examination in the event of a second failure, the examinee must wait 1 year before a third examination.

(4) A candidate failing three examinations may not be allowed readmission to the examination. The candidate may apply for a special circumstance waiver from the board to be readmitted to the examination.

History: En. 66-2359 by Sec. 7, Ch. 366, L. 1975; R.C.M. 1947, 66-2359; amd. Sec. 11, Ch. 553, L. 1985; amd. Sec. 8, Ch. 108, L. 1995.

37-67-312. Licensure of professional engineers without examination by comity or endorsement. (1) A person holding a certificate of registration to engage in the practice of engineering issued to the person by a proper authority of a state, territory, or possession of the United States, the District of Columbia, or any foreign country, based on requirements that do not conflict with the provisions of this chapter and that were of a standard not lower than that specified in the applicable registration act in effect in this state at the time the certificate was issued may upon application be registered without further examination.

(2) A person holding a certificate of qualification issued by the committee on national engineering certification of the national council of examiners for engineering and surveying and whose qualifications meet the requirements of this chapter may upon application be registered without further examination.

History: En. 66-2357 by Sec. 5, Ch. 366, L. 1975; R.C.M. 1947, 66-2357(1)(a)(i); amd. Sec. 9, Ch. 108, L. 1995.

Cross-References

Recognition of out-of-state licenses during disaster or emergency, 10-3-204.

37-67-313. Comity consideration for land surveyors from other states. A person holding a certificate of registration to engage in the practice of land surveying issued by a proper authority of a state, territory, or possession of the United States or the District of Columbia, based on requirements that do not conflict with the provisions of this chapter and that were of a standard not lower than that specified in the applicable registration act in effect in this state at the time the certificate was issued, will be given comity consideration. However, the person may be asked to meet the conditions for taking examinations and to take them as the board considers necessary to determine the person's qualifications. In any event, the person shall pass a written examination that includes questions on laws, procedures, and practices pertaining to the practice of land surveying in this state.

History: En. 66-2357 by Sec. 5, Ch. 366, L. 1975; R.C.M. 1947, 66-2357(2)(a)(iii); amd. Sec. 12, Ch. 553, L. 1985; amd. Sec. 10, Ch. 108, L. 1995.

Cross-References

Recognition of out-of-state licenses during disaster or emergency, 10-3-204.

37-67-314. Issuance of certificates — seal of professional engineer or professional land surveyor — enrollment card for interns. (1) The department shall issue to any applicant who, in the opinion of the board, has met the requirements of this chapter a certificate of registration giving the registrant proper authority to engage in the practice of engineering or the practice of land surveying and to assume responsible charge of engineering or land surveying projects in this state. The certificate of registration for a professional engineer must carry the designation "professional engineer" and for a professional land surveyor, "professional land surveyor". It must give the full name and serial number of the registrant and must be signed by the presiding officer and the secretary under the seal of the board.

(2) This certificate is prima facie evidence that the named person is entitled to all rights, privileges, and responsibilities of a professional engineer or professional land surveyor while the certificate of registration remains unrevoked or unexpired.

(3) Each registrant may, upon registration, obtain a seal of a design authorized by the board, bearing the registrant's name, serial number, and the

legend "professional engineer" or "professional land surveyor". Plans, specifications, plats, drawings, reports, design information, and calculations prepared by a registrant must when issued be signed with a written signature, dated, and stamped with the seal or a seal facsimile. It is unlawful for a registrant to affix or permit the seal and signature or seal facsimile to be affixed to any plans, specifications, plats, drawings, reports, design information, or calculations after the expiration of a certificate or for projects for which the registrant was not in responsible charge.

(4) The department shall issue to any applicant who, in the opinion of the board, has met the requirements of this chapter an enrollment card as an engineer intern or land surveyor intern. The enrollment card must indicate that the applicant's name and status has been recorded with the board. The enrollment card does not authorize the holder to practice as a professional engineer or professional land surveyor.

History: **En. 66-2360 by Sec. 8, Ch. 366, L. 1975; R.C.M. 1947, 66-2360; amd. Sec. 13, Ch. 553, L. 1985; amd. Sec. 11, Ch. 108, L. 1995.**

Cross-References [illegible] Manner of making seal, 1-4-202.
Seal defined, 1-4-201.

37-67-315. Biennial renewal — fee — statement of competency. (1) Certificates of registration expire every second year on the date established by rule of the department and become invalid on that date unless renewed. The department shall notify each person registered under this chapter of the date of the expiration of the person's certificate and the amount of the fee required for its renewal for 2 years. This notice must be mailed at least 1 month in advance of the date of the expiration of the certificate. Renewal may be made prior to the expiration date by the payment of a fee as set by the board for either a professional engineer or professional land surveyor. For renewal of a dual license as both a professional engineer and professional land surveyor, the fee must be set by the board.

(2) A certificate may not be renewed unless the registrant submits a statement to the effect and the board is satisfied that the registrant has maintained competency by:

(a) the continued practice of engineering or land surveying; and

(b) engaging in other activities that provide for the maintenance of competency if prescribed by board rule, such as continuing education, which may require up to 15 professional development hours as prescribed by board rule and is generally patterned after the model rules of the national council of examiners for engineering and surveying.

(3) Failure on the part of a registrant to renew the certificate biennially prior to the expiration date does not deprive the registrant of the right of renewal; however, a registrant who fails to pay the renewal fee for an additional year of the biennium is considered a new applicant and is required to submit a new application.

(4) The fee for any registrant who fails to renew the certificate prior to the expiration date must be increased by an amount not to exceed 50% of the renewal fee. Renewal may not be completed until all fees are paid.

History: **En. Sec. 17, Ch. 150, L. 1957; Sec. 66-2340, R.C.M. 1947; amd. Sec. 7, Ch. 282, L. 1969; amd. Sec. 222, Ch. 350, L. 1974; amd. Sec. 8, Ch. 215, L. 1975; redes. 66-2361 by Sec. 9, Ch. 366, L. 1975; R.C.M. 1947, 66-2361; amd. Sec. 6, Ch. 408, L. 1979; amd. Sec.**

67, Ch. 345, L. 1981; amd. Sec. 3, Ch. 489, L. 1981; amd. Sec. 8, Ch. 390, L. 1983; amd. Sec. 14, Ch. 553, L. 1985; amd. Sec. 2, Ch. 107, L. 1995.

37-67-316. Replacement of lost or destroyed certificate. A new certificate of registration to replace a certificate revoked, lost, destroyed, or mutilated may be issued by the department, subject to the rules of the board.

History: En. 66-2365 by Sec. 13, Ch. 366, L. 1975; R.C.M. 1947, 66-2365(part).

37-67-317. Deposit of moneys collected. The department shall collect all moneys under this chapter and shall deposit these moneys in the state special revenue fund for the use of the board, subject to 37-1-101(6).

History: En. Sec. 10, Ch. 150, L. 1957; Sec. 66-2333, R.C.M. 1947; amd. Sec. 123, Ch. 147, L. 1963; amd. Sec. 28, Ch. 177, L. 1965; amd. Sec. 216, Ch. 350, L. 1974; redes. 66-2354 by Sec. 3, Ch. 366, L. 1975; R.C.M. 1947, 66-2354; amd. Sec. 1, Ch. 277, L. 1983.

37-67-318. Roster of licensees to be published by department. A roster showing the names and addresses of registered professional engineers and registered professional land surveyors shall be published by the department. Copies shall be placed on file with the secretary of state, the clerk of each incorporated city and town, and in the office of each county clerk and recorder within the state and furnished to each person registered and to the public, on request, at a fee established by the board.

History: En. Sec. 12, Ch. 150, L. 1957; Sec. 66-2335, R.C.M. 1947; amd. Sec. 218, Ch. 350, L. 1974; amd. and redes. 66-2356 by Sec. 4, Ch. 366, L. 1975; amd. Sec. 2, Ch. 317, L. 1977; R.C.M. 1947, 66-2356; amd. Sec. 7, Ch. 408, L. 1979; amd. Sec. 15, Ch. 553, L. 1985.

Cross-References

Public records generally, Title 2, ch. 6, part 1.

Prohibition on distribution or sale of mailing lists, 2-6-109.

37-67-319. Repealed. Sec. 128, Ch. 429, L. 1995.

History: En. 66-2368 by Sec. 16, Ch. 366, L. 1975; R.C.M. 1947, 66-2368; amd. Sec. 26, Ch. 22, L. 1979; amd. Sec. 16, Ch. 553, L. 1985.

37-67-320. Firms, partnerships, and corporations — requirements — exceptions. (1) A firm, partnership, or corporation:

(a) may engage in the practice of engineering in this state if any member of the firm, partnership, or corporation who is in responsible charge of engineering or land surveying work performed in this state is a professional engineer or a professional land surveyor, as appropriate;

(b) must have a professional engineer or professional land surveyor in residence who is in responsible charge of the engineering or land surveying work conducted in the office or place of business if the firm, partnership, or corporation is engaged in the practice of engineering or the practice of land surveying; and

(c) shall obtain a certificate of authorization from the board before engaging in the practice of engineering or the practice of land surveying.

(2) The provisions of subsection (1) do not apply to firms, partnerships, or corporations that are engaged in the practice of engineering or the practice of land surveying for their own benefit and do not practice or offer engineering or land surveying services to others.

History: En. Sec. 5, Ch. 553, L. 1985; amd. Sec. 12, Ch. 108, L. 1995; amd. Sec. 122, Ch. 429, L. 1995.

37-67-321. Emeritus status. (1) A registrant who has terminated his practice of engineering or land surveying may apply to the board for emeritus status.

(2) Upon receiving an application for emeritus status accompanied by the fee established by the board, the board shall issue a certificate of emeritus status to the applicant and record the applicant's name in the roster as an emeritus registrant, along with the date he received emeritus status.

(3) An emeritus registrant may retain but may not use his seal and may not practice engineering or land surveying.

(4) The board shall reissue a certificate of registration to an emeritus registrant who pays all application fees, meets all current requirements for registration, and demonstrates to the board's satisfaction that for the 2 years preceding his application for registration he has met the requirements for maintaining professional competence established under 37-67-315.

History: En. Sec. 19, Ch. 553, L. 1985.

37-67-322 through 37-67-330 reserved.

37-67-331. Revocation, suspension, or refusal to renew certificate — grounds — procedure — reinstatement. (1) The board may reprimand or revoke, suspend, or refuse to renew the certificate of a registrant found responsible for:

(a) fraud or deceit in obtaining a certificate of registration;

(b) gross negligence, incompetency, or misconduct in the practice of engineering or land surveying as a registered professional engineer or professional land surveyor;

(c) a felony;

(d) a violation of rules for professional conduct for professional engineers and professional land surveyors adopted by the board;

(e) failing to comply with the Corner Recordation Act if the person is a professional land surveyor.

(2) Any person may make charges of fraud, deceit, gross negligence, incompetency, or misconduct against a registrant. The charges must be made by affidavit, subscribed and sworn to by the person making them, and filed with the department. The charges must be investigated by the board. For purposes of investigation under this section, the board may require that a registrant meet with the board.

(3) The board may require a registrant to take a written or oral examination, or both, in a proceeding to reprimand or to revoke, suspend, or refuse to renew the certificate of registration.

(4) If, after a hearing, five or more members of the board vote in favor of sustaining the charges, the board shall reprimand, suspend, refuse to renew, or revoke the certificate of registration of the registered professional engineer or professional land surveyor.

(5) The board, for reasons it considers sufficient, may reissue a certificate of registration to a person whose certificate has been revoked if five or more members of the board vote in favor of the reissuance.

History: En. 66-2365 by Sec. 13, Ch. 366, L. 1975; R.C.M. 1947, 66-2365(part); amd. Sec. 8, Ch. 408, L. 1979; amd. Sec. 17, Ch. 553, L. 1985; amd. Sec. 13, Ch. 108, L. 1995.

Cross-References

Oaths, Title 1, ch. 6.

Affidavits, Title 26, ch. 1, part 10.

Unfair trade practices and consumer protection, Title 30, ch. 14.

Reporting disciplinary actions against licensees, 37-1-105.

Perjury, 45-7-201.

Corner Recordation Act of Montana, Title 70, ch. 22, part 1.

37-67-332. Violations — penalties — enforcement. (1) (a) A person commits a criminal offense if the person knowingly:

(i) practices or offers to practice engineering or land surveying in this state without being registered under this chapter;

(ii) presents or attempts to use the certificate of registration or the seal of another person;

(iii) gives false or forged evidence to the board or department in obtaining a certificate of registration;

(iv) impersonates another registrant;

(v) attempts to use an expired, revoked, or emeritus certificate of registration; or

(vi) violates a provision of this chapter.

(b) A person convicted under subsection (1)(a) shall on conviction be fined not less than $100 or more than $500 or be incarcerated in the county jail for a period not exceeding 3 months, or both.

(2) All officers of the law of this state or one of its political subdivisions shall enforce this chapter and prosecute persons violating it. The attorney general shall act as legal adviser of the board and render legal assistance necessary in carrying out this chapter.

(3) The board may apply to the appropriate court for an injunction against a person found by the board to have practiced or attempted or offered to practice engineering or land surveying in this state without a valid certificate of registration.

(4) If a person violates an injunction against practice without a valid certificate of registration, the court may impose a fine in an amount not to exceed $25,000.

History: En. Sec. 23, Ch. 150, L. 1957; Sec. 66-2346, R.C.M. 1947; amd. Sec. 225, Ch. 350, L. 1974; redes. 66-2366 by Sec. 14, Ch. 366, L. 1975; R.C.M. 1947, 66-2366; amd. Sec. 18, Ch. 553, L. 1985; amd. Sec. 3, Ch. 107, L. 1995.

Cross-References

Prosecutorial duties of County Attorney, 7-4-2712.

Duties of County Attorney relating to state matters, 7-4-2716.

Forgery, 45-6-325.

CHAPTER 68

ELECTRICIANS AND ELECTRICAL SAFETY

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37-68-307. Examination procedure — issuance of master, journeyman, or residential electrician's license — expiration.
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37-68-309. Repealed.
37-68-310. License renewal period — renewal of lapsed licenses.
37-68-311. Examination fee — license fee — specific exemption for apprentices.
37-68-312. Electrical contractor's license — application — issuance — fees — renewal.
37-68-313. Reasonable fees — deposit of fees and fines collected.
37-68-314. Qualifications for licensing examination — when no discretion in board.
37-68-315. Proof of license.
37-68-316. Citation and fine for failure to display license.
37-68-317 through 37-68-320 reserved.
37-68-321. Repealed.
37-68-322. Penalty.

Chapter Cross-References

Construction contracts, Title 18, ch. 2.

Building construction standards, Title 50, ch. 60.

Part 1
General

37-68-101. Purpose. The purpose of this chapter is to:

(1) protect the health and safety of the people of this state from the danger of electrically caused shocks, fires, and explosions;

(2) protect property from the hazard of electrically caused fires and explosions;

(3) establish a procedure for determining where and by whom electrical installations are to be made;

(4) assure the public that persons making electrical installations are qualified; and

(5) insure that the electrical installations and electrical products made and sold in this state meet minimum safety standards.

History: En. Sec. 2, Ch. 148, L. 1965; amd. Sec. 19, Ch. 366, L. 1969; amd. Sec. 1, Ch. 425, L. 1973; amd. Sec. 12, Ch. 226, L. 1974; amd. Sec. 269, Ch. 350, L. 1974; amd. Sec. 8, Ch. 504, L. 1977; R.C.M. 1947, 66-2802(part).

37-68-102. Definitions. Unless the context requires otherwise, in this chapter the following definitions apply:

(1) "Board" means the state electrical board provided for in 2-15-1874.

(2) "Department" means the department of commerce provided for in Title 2, chapter 15, part 18.

(3) "Electrical contractor" means a person, firm, partnership, corporation, association, or combination of these who undertakes or offers to undertake for another the planning, laying out, supervising, and installing or the making of additions, alterations, and repairs in the installation of wiring apparatus and equipment for electric light, heat, and power. A registered electrical engineer who plans or designs electrical installations is not an electrical contractor.

(4) "Journeyman electrician" means a person having the necessary qualifications, training, experience, and technical knowledge to wire for, install, and repair electrical apparatus and equipment for light, heat, power, and other purposes under the rules governing this work.

(5) "Master electrician" means a person having the necessary qualifications, training, experience, and technical knowledge to properly plan, lay out, and supervise the installation and repair of wiring apparatus and equipment for electric light, heat, power, and other purposes under the rules governing this work.

(6) "Residential electrician" means a person having the necessary qualifications, training, experience, and technical knowledge to wire for, install, and repair electrical apparatus and equipment for light, heat, power, and other purposes in residential construction consisting of less than five living units in a single structure under the rules governing this work.

History: En. Sec. 3, Ch. 148, L. 1965; amd. Sec. 270, Ch. 350, L. 1974; R.C.M. 1947, 66-2803; amd. Sec. 4, Ch. 546, L. 1979; amd. Sec. 3, Ch. 274, L. 1981.

37-68-103. Exemptions. (1) Nothing in this chapter shall be deemed to apply to the installation, alteration, or repair of electrical signal or communications equipment owned or operated by a public utility or a city. For purposes of this exemption, "communications equipment" includes telephone wire inside a customer's premises. Nothing in this chapter prohibits a public utility from doing inside wiring to install, alter, repair, or maintain electrical equipment, installations, or facilities in buildings owned by the public utility if the work is accomplished by an employee who is a licensed electrician. If the building owned by the public utility is open to the public and the inside wiring constitutes major renovation or construction, the installation, alteration, repair, or maintenance of electrical equipment, installations, or facilities is subject to permits and inspections required by law.

(2) The licensing or inspection provisions of this chapter do not apply to regularly employed maintenance electricians doing maintenance work on the business premises of their employer, nor do they apply to line work on the business premises of the employer when ordinary and customary in-plant or onsite installations, modifications, additions, or repairs are performed.

(3) Nothing in this chapter shall be construed to require an individual to hold a license while or for doing electrical work on his own property or residence provided that said property or residence is maintained for his own use.

(4) An individual, firm, partnership, or corporation may engage in business as an electrical contractor without an electrician's license if all electrical work performed by such individual, firm, partnership, or corporation is under the direction, control, and supervision of a licensed master electrician or under the direction, control, and supervision of a journeyman electrician for residential construction consisting of less than five living units in a single structure.

(5) Any person who plugs in an electrical appliance where an approved electrical outlet is already installed shall not be considered as an installer.

(6) No provisions of this chapter shall in any manner interfere with, hamper, preclude, or prohibit any vendor of any electrical appliance from selling, delivering, and connecting any electrical appliance if the connection does not necessitate the installation of electrical wiring of the structure where the appliance is to be connected.

History: En. Sec. 12, Ch. 148, L. 1965; amd. Sec. 1, Ch. 423, L. 1973; amd. Sec. 1, Ch. 269, L. 1975; R.C.M. 1947, 66-2812; amd. Sec. 5, Ch. 546, L. 1979; amd. Sec. 1, Ch. 245, L. 1987.

Cross-References

Exceptions to electrical installation requirements, 50-60-602.

Part 2
State Electrical Board

Part Cross-References

Right to know, Art. II, sec. 9, Mont. Const.

Seal defined, 1-4-201.

Open meetings, Title 2, ch. 3, part 2.

Adoption and publication of rules, Title 2, ch. 4, part 3.

Allocation of boards for administrative purposes, 2-15-121.

Quasi-judicial boards, 2-15-124.

Board established, 2-15-1874.

Issuance of injunctions on nonjudicial days, 3-1-302, 3-5-302.

Contempts, Title 3, ch. 1, part 5.

Injunctions, Rule 65, M.R.Civ.P. (see Title 25, ch. 20); Title 27, ch. 19.

Affidavits, Title 26, ch. 1, part 10.

Duties of Department, Director, and boards, Title 37, ch. 1, part 1.

Disrupting meeting as disorderly conduct, 45-8-101.

37-68-201. Organization — meetings — quorum — rulemaking power — seal. (1) Each July, the board shall elect from its membership a president, vice president, and secretary-treasurer.

(2) The board shall meet quarterly and at other times it considers necessary.

(3) A majority of the members of the board shall constitute a quorum for transaction of business.

(4) The board may:

(a) adopt rules for the administration of this chapter, for the licensing of electrical contractors and for the examination and licensing of master and journeymen electricians;

(b) adopt a seal;

(c) cause the prosecution and enjoinder of persons violating this chapter.

History: (1), (2), (4)En. Sec. 5, Ch. 148, L. 1965; amd. Sec. 272, Ch. 350, L. 1974; amd. Sec. 11, Ch. 453, L. 1977; Sec. 66-2805, R.C.M. 1947; (3)En. Sec. 4, Ch. 148, L. 1965; amd. Sec. 1, Ch. 374, L. 1973; Sec. 66-2804, R.C.M. 1947; amd. and redes. 82A-1602.10 by Sec. 271, Ch. 350, L. 1974; amd. Sec. 58, Ch. 439, L. 1975; Sec. 82A-1602.10, R.C.M. 1947; R.C.M. 1947, 66-2805(1), (2)(a) thru (2)(c), 82A-1602.10(5); amd. Sec. 4, Ch. 245, L. 1987; amd. Sec. 123, Ch. 429, L. 1995.

37-68-202. Compensation and expenses of board members. Each member of the board shall receive compensation and travel expenses as provided for in 37-1-133.

History: Ap. p. Sec. 4, Ch. 148, L. 1965; amd. Sec. 1, Ch. 374, L. 1973; Sec. 66-2804, R.C.M. 1947; amd. and redes. 82A-1602.10 by Sec. 271, Ch. 350, L. 1974; amd. Sec. 58, Ch.

439, L. 1975; Sec. 82A-1602.10, R.C.M. 1947; Ap. p. Sec. 5, Ch. 148, L. 1965; amd. Sec. 272, Ch. 350, L. 1974; amd. Sec. 11, Ch. 453, L. 1977; Sec. 66-2805, R.C.M. 1947; R.C.M. 1947, 66-2805(3), 82A-1602.10(4); amd. Sec. 33, Ch. 474, L. 1981.

Part 3
Licensing

Part Cross-References

Licensing to follow contested case procedure, 2-4-631.

Suspension of license fees for persons in military service, 10-1-605.

Duty of Department to administer and grade examinations, 37-1-101.

Duty of Board to adopt and enforce licensing and certification rules, 37-1-131.

Licensing boards to establish fees commensurate with costs, 37-1-134.

Licensing investigation and review — record access, 37-1-135.

Grounds for disciplinary action as grounds for license denial — conditions to new licenses, 37-1-137.

Licensure of criminal offenders, Title 37, ch. 1, part 2.

Nondiscrimination in licensing, 49-3-204.

37-68-301. License required to engage in electrical work. (1) A person may not engage in or work at the business, trade, or calling of electrical contractor, residential electrician, journeyman electrician, or master electrician in this state until the person has received from the department a license or permit to work as an electrical contractor, residential electrician, journeyman electrician, or master electrician.

(2) A person who has received a license from the department under the provisions of this chapter shall carry the license, or proof of licensure, at all times while working at a job site and performing work that requires a license. Acceptable proof of licensure must be determined by the board and made known to each licensee by the department when a license is issued.

(3) A private or public employment agency or labor union, or an employee thereof, who refers persons for employment by others may not refer a person for employment by others to perform the work of an electrical contractor, residential electrician, journeyman electrician, or master electrician in this state unless the person has received from the department a license or permit to work as an electrical contractor, residential electrician, journeyman electrician, or master electrician.

History: En. Sec. 6, Ch. 148, L. 1965; amd. Sec. 274, Ch. 350, L. 1974; R.C.M. 1947, 66-2806; amd. Sec. 6, Ch. 546, L. 1979; amd. Sec. 1, Ch. 31, L. 1993; amd. Sec. 2, Ch. 402, L. 1999.

Compiler's Comments

1999 Amendment: Chapter 402 inserted (2) regarding license and proof of insurance; and made minor changes in style. Amendment effective July 1, 1999.

Cross-References

Installation of new security alarm systems by electrician, 37-60-409.

37-68-302. Unauthorized use of title. No person, firm, partnership, corporation, or association shall assume or use the title or designation of licensed master electrician, licensed journeyman electrician, or residential electrician unless qualified and licensed under this chapter.

History: En. Sec. 8, Ch. 148, L. 1965; R.C.M. 1947, 66-2808; amd. Sec. 7, Ch. 546, L. 1979.

37-68-303. Apprentice may work under licensed electrician — record of apprentices. This chapter does not prohibit a person from working as an apprentice in the trade of electrician with an electrician licensed under this chapter and under rules made by the board. The name and residence of each apprentice and the name and residence of his employer shall be filed with the department, and a record shall be kept by the department showing the name and residence of each apprentice.

History: En. Sec. 17, Ch. 148, L. 1965; amd. Sec. 281, Ch. 350, L. 1974; R.C.M. 1947, 66-2817.

Cross-References

Apprenticeship, Title 39, ch. 6, part 1.

37-68-304. Master electricians — application — qualifications — contents of examination. (1) An applicant for a master electrician's license shall furnish written evidence that he is a graduate electrical engineer of an accredited college or university and has 1 year of practical electrical experience or that he is a graduate of an electrical trade school and has at least 4 years of practical experience in electrical work or that he has had at least 5 years' practical experience in planning, laying out, or supervising the installation and repair of wiring, apparatus, or equipment for electrical light, heat, and power.

(2) Applicants for license as a master electrician shall file an application on forms prescribed by the board and furnished by the department, together with the examination fee. The board shall, not less than 30 days prior to a scheduled written examination, notify each applicant that the evidence submitted with his application is sufficient to qualify him to take the written examination or that the evidence is insufficient and is rejected. If the application is rejected, the board shall set forth the reasons in the notice to the applicant and shall authorize the department to return the applicant's examination fee. The place of examinations shall be designated by the board, and examinations shall be held at least once a year and at other times as, in the opinion of the board, the number of applicants warrants.

(3) The written examination shall consist of at least 30 questions designed to fairly test the applicant's knowledge and his technical application in the following subjects:

(a) the national electrical code;

(b) cost estimating for electrical installments;

(c) procurement and handling of materials needed for electrical installations and repair;

(d) reading of blueprints for electrical work;

(e) drafting and layout of electrical circuits;

(f) knowledge of practical electrical theory.

History: En. Sec. 7, Ch. 148, L. 1965; amd. Sec. 275, Ch. 350, L. 1974; R.C.M. 1947, 66-2807(1); amd. Sec. 2, Ch. 245, L. 1987.

37-68-305. Journeyman and residential electricians — application — qualifications — contents of examination. (1) An applicant for a journeyman electrician's license shall furnish written evidence that he has had at least 4 years' apprenticeship in the electrical trade or 4 years' practical experience in the wiring for, installing, and repairing of electrical apparatus and equipment for light, heat, and power. Applications for license and notice to the applicant shall be made and given as in the case of master electricians' licenses. The written examination for a journeyman's license shall consist of at least 30 questions designed to fairly test the applicant's knowledge and the technical application thereof in the following subjects:

(a) the Ohm's law;
(b) the national electrical code;
(c) layout and practical installation of electrical circuits.

(2) An applicant for a residential electrician's license shall furnish written evidence that he has had at least 2 years' apprenticeship in the electrical trade or 2 years' practical experience in the wiring for, installing, and repairing of electrical apparatus and equipment for light, heat, and power in residential construction consisting of less than five living units in a single structure. Application for license and notice to the applicant is made and given as in the case of master electricians' licenses. The written examination for a residential electrician's license consists of at least 30 questions designed to fairly test the applicant's knowledge and the technical application thereof in the following subjects:

(a) the Ohm's law;
(b) the national electrical code;
(c) layout and practical installation of electrical circuits in residential construction consisting of less than five living units in a single structure.

History: En. Sec. 7, Ch. 148, L. 1965; amd. Sec. 275, Ch. 350, L. 1974; R.C.M. 1947, 66-2807(2); amd. Sec. 8, Ch. 546, L. 1979.

37-68-306. Repealed. Sec. 128, Ch. 429, L. 1995.

History: En. Sec. 10, Ch. 148, L. 1965; amd. Sec. 277, Ch. 350, L. 1974; R.C.M. 1947, 66-2810; amd. Sec. 9, Ch. 546, L. 1979.

37-68-307. Examination procedure — issuance of master, journeyman, or residential electrician's license — expiration. (1) To ensure impartiality, the examination for either the residential, master's, or journeyman's license must be by numbers drawn by lot. A paper may not be marked with the name of an applicant, but must be anonymously graded by the department. The examination passing grade is 75%.

(2) If it is determined that the applicant has passed the examination, the department, on payment by the applicant of the fee, shall issue to the applicant a license that authorizes the licensee to engage in the business, trade, or calling of a residential electrician, journeyman electrician, or master electrician.

(3) Unless otherwise provided by rules established by the department, each original license expires on a July 15 that is not more than 3 years subsequent to the date of issuance.

History: En. Sec. 7, Ch. 148, L. 1965; amd. Sec. 275, Ch. 350, L. 1974; R.C.M. 1947, 66-2807(3); amd. Sec. 10, Ch. 546, L. 1979; amd. Sec. 2, Ch. 31, L. 1993; amd. Sec. 49, Ch. 492, L. 1997.

37-68-308. Licensure without examination of persons licensed locally. The board may authorize the department to issue a license as a master electrician, journeyman electrician, or residential electrician to an applicant without written examination on satisfactory proof that the applicant has the qualifications to apply for a license under this chapter and is the holder of a valid license issued by a city or other political subdivision of this state which provides for the examination and licensing of electricians.

History: En. Sec. 11, Ch. 148, L. 1965; amd. Sec. 278, Ch. 350, L. 1974; R.C.M. 1947, 66-2811; amd. Sec. 11, Ch. 546, L. 1979.

37-68-309. Repealed. Sec. 128, Ch. 429, L. 1995.

History: En. Sec. 9, Ch. 148, L. 1965; amd. Sec. 276, Ch. 350, L. 1974; R.C.M. 1947, 66-2809.

37-68-310. License renewal period — renewal of lapsed licenses. Licenses of residential electricians, journeyman electricians, or master electricians, unless they have been suspended or revoked by the board or unless the department changes the duration of the renewal period, must be renewed for a period of 3 years by the department on application for renewal made to the department on or before the renewal date set by department rule and on the payment of a renewal fee. If application for renewal is not made on or before the renewal date, an additional fee prescribed by board rule must be paid. It is unlawful for a person who refuses or fails to pay the renewal fee to practice electrical work in this state. A person with a lapsed license may be issued a renewal license without examination if the applicant pays the original renewal fee and any delinquency fee within 1 year of the license expiration date. A lapsed license that is not renewed within 1 year following its expiration date may not be renewed unless the applicant passes the examination and pays the fee required for an original license.

History: En. Sec. 7, Ch. 148, L. 1965; amd. Sec. 275, Ch. 350, L. 1974; R.C.M. 1947, 66-2807(4); amd. Sec. 12, Ch. 546, L. 1979; amd. Sec. 68, Ch. 345, L. 1981; amd. Sec. 3, Ch. 31, L. 1993; amd. Sec. 1, Ch. 113, L. 1995; amd. Sec. 124, Ch. 429, L. 1995; amd. Sec. 50, Ch. 492, L. 1997.

37-68-311. Examination fee — license fee — specific exemption for apprentices. (1) Master electricians and journeyman or residential electricians installing or intending to install for hire electric wiring or equipment to convey electric current or apparatus to be operated by this current shall make application for a license to the department. The application must be on a form furnished by the department and must be accompanied by an examination fee set by the board. The forms must state the applicant's full name and address, the extent of work experience, and other information required by the board. If the applicant has complied with the rules adopted by the board and, being qualified, has successfully completed the examination, the applicant shall pay to the department a license fee set by the board for a master electrician's license or for a journeyman or a residential electrician's license, and upon receipt of the fee the department shall issue the proper license to the applicant.

(2) A person serving a 4-year electrician apprenticeship under the supervision of a licensed electrician is exempt from the licensing provision of this section during training. Credit for the time spent in an electrical school must be given to the master electrician, journeyman electrician, residential electrician, or apprentice, up to a total of 2 years, on the 4-year requirement.

(3) In addition to the temporary permits authorized in 37-1-305, the board may, on a case-by-case basis at the board's discretion and in accordance with criteria determined by the board, renew a temporary practice permit for a person who fails the first license examination for which the person is eligible but who submits a temporary practice permit renewal application to the board stating that the person intends to retake the license examination on the next available date.

History: En. Sec. 15, Ch. 148, L. 1965; amd. Sec. 280, Ch. 350, L. 1974; R.C.M. 1947, 66-2815; amd. Sec. 13, Ch. 546, L. 1979; amd. Sec. 4, Ch. 31, L. 1993; amd. Sec. 2, Ch. 203, L. 1999.

Compiler's Comments

1999 Amendment: Chapter 203 inserted (3) regarding renewal of temporary practice permit. Amendment effective October 1, 1999.

37-68-312. Electrical contractor's license — application — issuance — fees — renewal. Each electrical contractor shall, on or before the date set by department rule, file with the department an application in writing for each firm operated by the electrical contractor in this state for renewal of the license. A license may not be issued or renewed until the applicant meets the licensure requirements and has paid to the department a license fee set by the board for each firm operated by the electrical contractor. Licenses must bear the date of issuance or renewal. A license must be renewed for a 3-year period upon payment to the department of the license fee on or before the renewal date and upon meeting the requirements set by board rule.

History: En. Sec. 14, Ch. 148, L. 1965; amd. Sec. 279, Ch. 350, L. 1974; R.C.M. 1947, 66-2814; amd. Sec. 14, Ch. 546, L. 1979; amd. Sec. 5, Ch. 31, L. 1993; amd. Sec. 125, Ch. 429, L. 1995.

37-68-313. Reasonable fees — deposit of fees and fines collected. (1) All fees established by the board under this chapter must be reasonably related to the respective program costs. Fees collected by the department under this chapter must be deposited in the state special revenue fund for the use of the board.

(2) Fines collected under this chapter must be deposited in the state general fund.

History: En. Sec. 19, Ch. 148, L. 1965; amd. Sec. 282, Ch. 350, L. 1974; R.C.M. 1947, 66-2819; amd. Sec. 15, Ch. 546, L. 1979; amd. Sec. 1, Ch. 277, L. 1983; amd. Sec. 3, Ch. 402, L. 1999.

Compiler's Comments

1999 Amendment: Chapter 402 inserted (2) regarding deposit of fines; and made minor changes in style. Amendment effective July 1, 1999.

37-68-314. Qualifications for licensing examination — when no discretion in board. A person applying for a license as a journeyman electrician or a residential electrician must be allowed by the state electrical board to take the required examination and be granted a license upon passing the examination if:

(1) he has completed an appropriate training program conducted by a bona fide union;

(2) he has completed the appropriate required apprenticeship; or

(3) he has worked in the electrical field for 10 years and is considered by his employer, as shown by a written statement of the employer, to be capable and qualified to take the examination for the license for which he is applying.

History: En. Sec. 1, Ch. 332, L. 1981; amd. Sec. 3, Ch. 245, L. 1987.

37-68-315. Proof of license. (1) An employee of a private or public employment agency or labor union, a building code compliance inspector, an employee of the department, a person who is professionally responsible for a job site, or an electrician licensed under Title 37, chapter 68, has the right to ask a person working at a job site doing work that requires an electrician's license to provide proof of licensure. If the person performing the work is unable to furnish proof of licensure, the requesting person may report that fact to the board or the department.

(2) An employee of the department may issue a citation to and collect a fine, as provided in 37-68-316, from a person at a job site where the person is performing electrical work if the person fails to display an electrician's license or proof of licensure at the request of the department inspector.

History: En. Sec. 1, Ch. 368, L. 1995; amd. Sec. 4, Ch. 402, L. 1999.

Compiler's Comments

1999 Amendment: Chapter 402 inserted (2) authorizing department to issue citation and collect fine; and made minor changes in style. Amendment effective July 1, 1999.

37-68-316. Citation and fine for failure to display license. (1) A citation for failure to display an electrician's license or proof of licensure issued by an employee of the department must include:

(a) the time and date on which the citation is issued;

(b) the name, address, mailing address, and signature of the person to whom the citation is issued;

(c) reference to the statutory authority to issue the citation;

(d) the name, title, affiliation, and signature of the person issuing the citation;

(e) information explaining the procedure for the person to follow in order to pay the fine or to demonstrate proof of licensure; and

(f) the amount of the applicable fine.

(2) The applicable civil fines for failing to display a license or proof of licensure are as follows:

(a) $100 for the first offense;

(b) $250 for the second offense; and

(c) $500 for the third and any subsequent offense.

(3) Each day of violation constitutes a separate offense. The person issuing the citation is responsible for determining, by means of an up-to-date list or through telephone or other communication with the board office, whether the citation being issued is for a first, second, or subsequent offense.

(4) The person who issues the citation is authorized to collect the fine, but the person who is issued a citation may pay the fine to the appropriate authority identified on the citation within 5 business days of the date of issuance. The board may, upon finding that the person has demonstrated acceptable proof of licensure, waive or refund the fine.

(5) A person who refuses to sign and accept a citation commits a misdemeanor, punishable in the same manner as provided in 37-1-318.

History: En. Sec. 9, Ch. 402, L. 1999.

Compiler's Comments

Effective Date: Section 11, Ch. 402, L. 1999, provided that this section is effective July 1, 1999.

37-68-317 through 37-68-320 reserved.

37-68-321. Repealed. Sec. 128, Ch. 429, L. 1995.

History: En. Sec. 5, Ch. 148, L. 1965; amd. Sec. 272, Ch. 350, L. 1974; amd. Sec. 11, Ch. 453, L. 1977; R.C.M. 1947, 66-2805(2)(d); amd. Sec. 16, Ch. 546, L. 1979.

37-68-322. Penalty. (1) Any person or corporation violating any provision of this chapter shall upon conviction of a violation:

(a) if a person, be punished by a fine not more than $500, by imprisonment for a term not to exceed 6 months, by revocation of the license, or by any combination of the fine, imprisonment, and revocation, in the discretion of the court; and

(b) if a corporation, be punished by a fine of not more than $1,000.

(2) Any officer or agent of a corporation or member or agent of a partnership or association who personally participates in or is an accessory to any violation of this chapter by the partnership, association, or corporation shall be subject to the penalties prescribed for individuals.

(3) A violation of this chapter is a continuing violation, and the statute of limitations is tolled until the violation ceases. The county attorney shall, upon request of the board, prosecute any violation of the licensing requirements of this chapter.

History: En. Sec. 20, Ch. 148, L. 1965; R.C.M. 1947, 66-2820; amd. Sec. 6, Ch. 31, L. 1993.

Cross-References

Criminal responsibility and accountability of corporations, 45-2-311, 45-2-312.

CHAPTER 69

PLUMBERS

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Chapter Cross-References

Construction contracts, Title 18, ch. 2.

Building construction standards, Title 50, ch. 60.

Part 1
General

37-69-101. Definitions. Unless the context requires otherwise, in this chapter the following definitions apply:

(1) "Board" means the board of plumbers provided for in 2-15-1875.

(2) "Department" means the department of commerce provided for in Title 2, chapter 15, part 18.

(3) "Drainage system" means all the piping inside the walls of a building that conveys sewage or other liquid wastes outside the building to the building sewer but that does not extend more than 2 feet outside the building way.

(4) "Field of plumbing" means the business, trade, or work having to do with the installation, removal, alteration, or repair of plumbing and drainage systems or parts thereof.

(5) "Journeyman plumber" means a person who is authorized to make installation of all sanitary plumbing and potable water supply piping and appliances connected thereto.

(6) "Master plumber" means a person who is authorized by this chapter to plan, estimate, bid, contract for, and supervise plumbing work and who may do the work of a journeyman plumber.

(7) (a) Except as provided in subsection (7)(b), plumbing system means all potable water supply and distribution pipes, plumbing fixtures and traps, drainage and vent pipes, and building drains, including their respective joints and connections, devices, receptacles, and appurtenances within the property lines of any premises, up to 20 feet beyond the building foundation line, and includes potable water piping, water heaters, and vents for the premises.

(b) As defined in subsection (7)(a), "plumbing system" does not include water services installed and maintained by water districts or water user associations in which water service is installed by any qualified person appointed or hired by the administrative authority of the water system.

(8) "Public sewer system" means any common sewer carrying liquid wastes from two or more dwellings or any other facility that serves the public.

(9) "Public water supply" means any community well, water hauler for cisterns, water bottling plant, water dispenser, or other water supply that serves 10 or more families or 25 or more persons on a regular and continuous basis.

History: En. 66-2401.1 by Sec. 227, Ch. 350, L. 1974; amd. Sec. 2, Ch. 497, L. 1975; R.C.M. 1947, 66-2401.1; amd. Sec. 4, Ch. 549, L. 1979; amd. Sec. 3, Ch. 274, L. 1981; amd. Sec. 1, Ch. 661, L. 1985.

37-69-102. Permanent and temporary exceptions. (1) Licensure is not required in the following instances of plumbing installation:

(a) when an owner of a single-family residence used exclusively for the owner's personal use installs all sanitary plumbing and potable water supply piping or when a mobile home dealer or a manufactured housing dealer connects a mobile home or a manufactured house to existing sanitary and potable water supply facilities as part of delivering and setting up a mobile home for a purchaser;

(b) in any mine, mill, smelter, refinery, or railroad;

(c) in a farm or ranch not connected to public water supply and sewage disposal systems. For the purposes of this subsection (1)(c), a "farm or ranch" means the same as in 39-3-402.

(d) in cities, towns, water districts, and water user associations extending, repairing, or replacing their own water and sewer mains;

(e) installation of water conditioner services in private dwellings;

(f) minor work by employees or agents of an appliance dealer incidental to the installation of an appliance purchased from the dealer;

(g) installation of a water meter by a qualified person appointed by the administrative authority of the water system; and

(h) in the case of a private water supply, installation of the pump, waterline, or pressure tank, regardless of whether the pump, waterline, or pressure tank is located inside or outside the structure being served.

(2) This chapter may not be construed to apply to or to affect plumbing installations in any mines, mills, smelters, refineries, public utilities, railroads, or plumbing installations on farms or ranches not connected to public water supply or sewage disposal systems.

(3) If a licensed person is not available, the council or commission of a county, city, or town or the board of directors or managers of a water or sewer district or water utility may, by ordinance, rule, or resolution, authorize an unlicensed person to perform plumbing work on a temporary basis if:

(a) the council, commission, or board of directors has provided reasonable notice by certified letter to the board; and

(b) the board has approved the temporary authorization or has failed to respond to the certified letter required under subsection (3)(a) within 30 days of the letter's postmark.

(4) The council, commission, board of directors, or board shall withdraw the temporary authorization provided for in subsection (3) when a licensed person is reasonably available.

History: (1)En. Sec. 1, Ch. 203, L. 1949; amd. Sec. 1, Ch. 185, L. 1961; amd. Sec. 1, Ch. 497, L. 1975; Sec. 66-2401, R.C.M. 1947; (2)En. Sec. 15, Ch. 251, L. 1959; amd. Sec. 1, Ch. 44, L. 1973; amd. Sec. 12, Ch. 497, L. 1975; Sec. 66-2426, R.C.M. 1947; R.C.M. 1947, 66-2401(2), 66-2426; amd. Sec. 2, Ch. 661, L. 1985; amd. Sec. 1, Ch. 361, L. 1999.

Compiler's Comments

1999 Amendment: Chapter 361 in (1)(a) near middle after "mobile home dealer" substituted "or a manufactured housing dealer connects a mobile home or a manufactured house" for "makes such installation" and after "existing" inserted "sanitary and potable water supply"; in (1)(c) inserted second sentence defining farm or ranch; in (1)(d) after "extending" inserted "repairing, or replacing"; inserted (1)(h) exempting installation of the pump, waterline, or pressure tank in the case of a private water supply; inserted (3) allowing an unlicensed person to perform temporary plumbing work under certain conditions; inserted (4) requiring withdrawal of the temporary authorization when a licensed person is reasonably available; and made minor changes in style. Amendment effective October 1, 1999.

Cross-References

Exceptions to plumbing installation requirements, 50-60-503.

Exceptions to penalty for violation of plumbing installation requirements, 50-60-515.

37-69-103. No penalty for hiring unlicensed plumber. This chapter may not be construed as imposing any penalty on any unlicensed person for hiring or contracting with an unlicensed person to do work in the field of plumbing. However, any person who himself engages in the field of plumbing at a time when he is not duly licensed is subject to the penalties imposed by this chapter.

History: En. Sec. 4, Ch. 251, L. 1959; amd. Sec. 8, Ch. 497, L. 1975; R.C.M. 1947, 66-2415; amd. Sec. 27, Ch. 22, L. 1979.

Part 2
Board of Plumbers

Part Cross-References

Right to know, Art. II, sec. 9, Mont. Const.

Open meetings, Title 2, ch. 3, part 2.

Meeting defined, 2-3-202.

Adoption and publication of rules, Title 2, ch. 4, part 3.

Public records, Title 2, ch. 6.

Allocation of boards for administrative purposes, 2-15-121.

Quasi-judicial boards, 2-15-124.

Board established, 2-15-1875.

Preservation of records, Title 22, ch. 3, part 2.

Duties of Department, Director, and boards, Title 37, ch. 1, part 1.

Duty of Department to keep records, 37-1-101.

Disrupting meeting as disorderly conduct, 45-8-101.

37-69-201. Chairman — quorum. (1) The board shall annually select a chairman from its members.

(2) A majority of the board constitutes a quorum.

History: (1)En. Sec. 3, Ch. 251, L. 1959; amd. Sec. 235, Ch. 350, L. 1974; Sec. 66-2414, R.C.M. 1947; (2)En. Sec. 9, Ch. 203, L. 1949; amd. Sec. 234, Ch. 350, L. 1974; Sec. 66-2409, R.C.M. 1947; R.C.M. 1947, 66-2409(1), 66-2414(part).

37-69-202. Rulemaking power — records. (1) The board may adopt rules necessary to carry out this chapter.

(2) The board shall adopt rules for the transaction of its business, and the department shall keep a record of the board's official actions.

History: (1)En. Sec. 9, Ch. 203, L. 1949; amd. Sec. 234, Ch. 350, L. 1974; Sec. 66-2409, R.C.M. 1947; (2)En. Sec. 3, Ch. 251, L. 1959; amd. Sec. 235, Ch. 350, L. 1974; Sec. 66-2414, R.C.M. 1947; R.C.M. 1947, 66-2409(2), 66-2414(part).

37-69-203. Compensation of board members — expenses. A member of the board is entitled to compensation and travel expenses as provided for in 37-1-133.

History: En. Sec. 3, Ch. 203, L. 1949; amd. Sec. 16, Ch. 251, L. 1959; amd. Sec. 2, Ch. 185, L. 1961; amd. Sec. 143, Ch. 147, L. 1963; amd. Sec. 2, Ch. 186, L. 1965; amd. Sec. 229, Ch. 350, L. 1974; amd. Sec. 39, Ch. 439, L. 1975; amd. Sec. 4, Ch. 497, L. 1975; R.C.M. 1947, 66-2403(1); amd. Sec. 34, Ch. 474, L. 1981.

Part 3
Licensing

Part Cross-References

Licensing to follow contested case procedure, 2-4-631.

Suspension of license fees for persons in military service, 10-1-605.

Duty of Department to administer and grade examinations, 37-1-101.

Duty of Board to adopt and enforce licensing and certification rules, 37-1-131.

Licensing boards to establish fees commensurate with costs, 37-1-134.

Licensing investigation and review — record access, 37-1-135.

Grounds for disciplinary action as grounds for license denial — conditions to new licenses, 37-1-137.

Licensure of criminal offenders, Title 37, ch. 1, part 2.

Nondiscrimination in licensing, 49-3-204.

37-69-301. License required. (1) Except as provided in 37-69-102, a person working at the field of plumbing in this state, either as a master plumber or as a journeyman plumber, shall first obtain a license as provided in Title 37, chapter 69, part 3.

(2) A person who receives a license under the provisions of this chapter shall carry the license, or proof of licensure, at all times while working on a job site and performing work that requires a license. Acceptable proof of licensure must be determined by the board and made known by the department to each licensee when a license is issued.

History: En. Sec. 1, Ch. 203, L. 1949; amd. Sec. 1, Ch. 185, L. 1961; amd. Sec. 1, Ch. 497, L. 1975; R.C.M. 1947, 66-2401(1); amd. Sec. 3, Ch. 661, L. 1985; amd. Sec. 2, Ch. 361, L. 1999; amd. Sec. 5, Ch. 402, L. 1999.

Compiler's Comments

1999 Amendments — Composite Section: Chapter 361 in (1) at beginning inserted exception clause, after "plumbing in" deleted "any incorporated city, town, or in any other area served by a public water supply or a public sewer system in", after "journeyman plumber" deleted "or who while working at the field of plumbing shall connect plumbing to or disconnect plumbing from a public water supply or public sewer system", after "first" substituted "obtain a license" for "secure a state license", and after "provided" inserted "in Title 37, chapter 69, part 3" and deleted former second sentence that read: "The council or commission of any city or town or board of directors or managers of a water or sewer district or water utility, in cases where a duly licensed person or persons are not reasonably available, may by ordinance, rule, or resolution duly adopted and upon reasonable notice by certified letter to the board of plumbers and upon their approval, or after 30 days from the date of the postmark of the certified letter if the board fails to respond to the certified letter, authorize the practice in the field of plumbing by a person or persons who have not obtained the state licenses as hereinafter provided until such time as a duly licensed person or persons are reasonably available or until the board of plumbers withdraws its authorization"; and made minor changes in style. Amendment effective October 1, 1999.

Chapter 402 inserted (2) regarding license and proof of insurance; and made minor changes in style. Amendment effective July 1, 1999.

Cross-References

"Registered mail" to include registered or certified mail, 1-1-202.

Metropolitan sanitary and/or storm sewer districts, Title 7, ch. 13, part 1.

Municipal sewage and/or water systems, Title 7, ch. 13, part 43.

37-69-302. Apprenticeship allowed. This chapter does not prohibit a person from working as an apprentice in the trade of plumbing with a plumber licensed by the department under the supervision of a licensed journeyman plumber. Only those apprentices registered with the department of labor and industry will be recognized by the department. The name and residence of each apprentice and the names and residences of their employers shall be filed with the department, and a record shall be kept by the department.

History: En. Sec. 6, Ch. 203, L. 1949; amd. Sec. 232, Ch. 350, L. 1974; amd. Sec. 6, Ch. 497, L. 1975; R.C.M. 1947, 66-2406.

Cross-References

Apprenticeship, Title 39, ch. 6, part 1.

37-69-303. Application — contents — requirements. A person, firm, or corporation desiring to engage in or work in the field of plumbing in this state, either as a master plumber or as a journeyman plumber, shall make application to the department by filing a written application stating his place of residence, age, experience, and the place where he has acquired his experience and shall at a time and place designated by the board be examined as to his qualifications for a license.

History: **En. Sec. 4, Ch. 203, L. 1949; amd. Sec. 230, Ch. 350, L. 1974; amd. Sec. 5, Ch. 497, L. 1975; R.C.M. 1947, 66-2404(part).**

37-69-304. Qualifications of applicants for journeyman plumber's license — restriction on authority. (1) The following requirements must be met by applicants for a journeyman plumber's license:

(a) a specific record of 5 years' experience in the field of plumbing of a character satisfactory to the board. This experience requirement may be fulfilled by working 5 years in a major phase of the plumbing business, verified by time or pay records, or by completing an apprenticeship program meeting the standards set by the department of labor and industry or the United States department of labor, bureau of apprenticeship, or credit towards this experience requirement may be given for time spent attending an accredited trade or other school specializing in training of value in the field of plumbing and approved by the board.

(b) satisfactory completion of an examination conducted by the department, subject to 37-1-101(4), testing the applicant's knowledge of techniques and methods employed in the field of plumbing and establishing by practical demonstration his competence in the special skills required in the field of plumbing.

(2) A licensed journeyman plumber may perform work only in the employment of a licensed master plumber unless otherwise permitted by rule of the board.

History: **En. Sec. 2, Ch. 203, L. 1949; amd. Sec. 1, Ch. 186, L. 1965; amd. Sec. 228, Ch. 350, L. 1974; amd. Sec. 3, Ch. 497, L. 1975; amd. Sec. 22, Ch. 101, L. 1977; R.C.M. 1947, 66-2402(2), (3); amd. Sec. 1, Ch. 10, L. 1991.**

37-69-305. Qualifications of applicants for master plumber's license — restriction on authority. (1) The following requirements must be met by an applicant for a master plumber's license:

(a) evidence of 4 years' experience as a licensed journeyman plumber in the field of plumbing, verified by time or pay records of actual plumbing experience;

(b) evidence of 3 years' experience working with a licensed master plumber or in a supervisory capacity in the field of plumbing, which may run concurrently with the requirement in subsection (1)(a); and

(c) satisfactory completion of an examination for master plumbers testing his knowledge of the field of plumbing and demonstrating his skill and ability in the field of plumbing.

(2) For purposes of subsection (1), a year's experience is 1,500 hours or more of work in a continuous 12-month period.

(3) A master plumber may not allow his license to be used by any person or firm, corporation, or business other than his own for the purpose of obtaining permits or for doing plumbing work under his license.

History: **(1)En. Sec. 2, Ch. 203, L. 1949; amd. Sec. 1, Ch. 186, L. 1965; amd. Sec. 228, Ch. 350, L. 1974; amd. Sec. 3, Ch. 497, L. 1975; amd. Sec. 22, Ch. 101, L. 1977; Sec. 66-2402, R.C.M. 1947; (2)En. Sec. 4, Ch. 203, L. 1949; amd. Sec. 230, Ch. 350, L. 1974; amd. Sec. 5, Ch. 497, L. 1975; Sec. 66-2404, R.C.M. 1947; R.C.M. 1947, 66-2402(part), 66-2404(part); amd. Sec. 5, Ch. 549, L. 1979; amd. Sec. 1, Ch. 369, L. 1989.**

37-69-306. Examination — issuance of license. (1) An applicant for a license to work in the field of plumbing shall be examined as to his qualifications by the department, subject to 37-1-101(4). The department shall examine each applicant for a license to determine his skill and qualifications as a master plumber or journeyman plumber.

(2) The applicant, upon successfully passing the examination prescribed by the board, shall be issued a license authorizing him to engage in the field of plumbing as a master plumber or journeyman plumber in the state of Montana.

(3) In the case of a firm or corporation, the examination and issuance of a license to an individual of the firm or to a principal of the firm or corporation satisfies the requirements of this chapter as to master plumbers but not as to journeyman plumbers. No individual, firm, or corporation may do the work of a master plumber unless licensed under this chapter.

(4) In addition to the temporary permits authorized in 37-1-305, the board may, on a case-by-case basis at the board's discretion and in accordance with criteria determined by the board, renew a temporary practice permit for a person who fails the first license examination for which the person is eligible but who submits a temporary practice permit renewal application to the board stating that the person intends to retake the license examination on the next available date.

History: (1), (2)En. Sec. 3, Ch. 203, L. 1949; amd. Sec. 16, Ch. 251, L. 1959; amd. Sec. 2, Ch. 185, L. 1961; amd. Sec. 143, Ch. 147, L. 1963; amd. Sec. 2, Ch. 186, L. 1965; amd. Sec. 229, Ch. 350, L. 1974; amd. Sec. 39, Ch. 439, L. 1975; amd. Sec. 4, Ch. 497, L. 1975; Sec. 66-2403, R.C.M. 1947; (3)En. Sec. 4, Ch. 203, L. 1949; amd. Sec. 230, Ch. 350, L. 1974; amd. Sec. 5, Ch. 497, L. 1975; Sec. 66-2404, R.C.M. 1947; R.C.M. 1947, 66-2403(2), 66-2404(part); amd. Sec. 3, Ch. 203, L. 1999.

Compiler's Comments

1999 Amendment: Chapter 203 inserted (4) regarding renewal of temporary practice permit. Amendment effective October 1, 1999.

37-69-307. Examination fee and renewal fee. (1) An applicant for a master plumber's license may not submit to the examinations prescribed by the board until the applicant has deposited with the department an examination fee prescribed by the board, and an applicant for a journeyman plumber's license may not submit to the examination prescribed by the board until the applicant has deposited with the department an examination fee as prescribed by the board.

(2) A license when issued expires on the date established by rule of the department. A license issued to a master plumber or a journeyman plumber may be renewed without examination, at any time prior to its expiration, by a written request for its renewal directed to the department and the payment of a fee as set by the board for renewal of a master plumber's license or a fee as set by the board for renewal of a journeyman plumber's license. Renewal is for the period established by the department by rule.

(3) Fees prescribed by the board pursuant to this section must be reasonably related to the costs incurred by the board in carrying out its respective functions.

History: En. Sec. 5, Ch. 203, L. 1949; amd. Sec. 3, Ch. 185, L. 1961; amd. Sec. 1, Ch. 237, L. 1965; amd. Sec. 231, Ch. 350, L. 1974; amd. Sec. 10, Ch. 215, L. 1975; amd. Sec. 3, Ch. 541, L. 1977; R.C.M. 1947, 66-2405; amd. Sec. 6, Ch. 549, L. 1979; amd. Sec. 9, Ch. 390, L. 1983; amd. Sec. 51, Ch. 492, L. 1997.

37-69-308. Deposit of fees and fines. (1) Money paid for license fees under this chapter must be deposited in the state special revenue fund for the use of the board, subject to 37-1-101(6).

(2) Fines collected under this chapter must be deposited in the state general fund.

History: En. Sec. 7, Ch. 203, L. 1949; amd. Sec. 144, Ch. 147, L. 1963; amd. Sec. 233, Ch. 350, L. 1974; R.C.M. 1947, 66-2407; amd. Sec. 1, Ch. 277, L. 1983; amd. Sec. 6, Ch. 402, L. 1999.

Compiler's Comments

1999 Amendment: Chapter 402 inserted (2) regarding deposit of fines; and made minor changes in style. Amendment effective July 1, 1999.

37-69-309. Repealed. Sec. 128, Ch. 429, L. 1995.

History: En. Sec. 5, Ch. 661, L. 1985.

37-69-310. Citation and fine for failure to display license. (1) A citation for failure to display a plumber's license or proof of licensure issued by an employee of the department of commerce must include:

(a) the time and date on which the citation is issued;

(b) the name, address, mailing address, and signature of the person to whom the citation is issued;

(c) reference to the statutory authority to issue the citation;

(d) the name, title, affiliation, and signature of the person issuing the citation;

(e) information explaining the procedure for the person to follow in order to pay the fine or to demonstrate proof of licensure; and

(f) the amount of the applicable fine.

(2) The applicable civil fines for failing to display a license or proof of licensure are as follows:

(a) $100 for the first offense;

(b) $250 for the second offense; and

(c) $500 for the third and any subsequent offense.

(3) Each day of violation constitutes a separate offense. The person issuing the citation is responsible for determining, by means of an up-to-date list or through telephone or other communication with the board office, whether the citation being issued is for a first, second, or subsequent offense.

(4) The person who issues the citation is authorized to collect the fine, but the person who is issued a citation may pay the fine to the board within 5 business days of the date of issuance. The board may, upon finding that the person has demonstrated acceptable proof of licensure, waive or refund the fine.

(5) A person who refuses to sign and accept a citation commits a misdemeanor, punishable in the same manner as provided in 37-1-318.

History: En. Sec. 8, Ch. 402, L. 1999.

Compiler's Comments

Effective Date: Section 11, Ch. 402, L. 1999, provided that this section is effective July 1, 1999.

37-69-311 through 37-69-318 reserved.

37-69-319. Proof of license — citation and fine. (1) An employee of a private or public employment agency or labor union, a building code compliance inspector, an employee of the department, a person who is professionally responsible for a job site, or a plumber licensed under Title 37, chapter 69, has the right to ask a person working at a job site doing work that requires a plumber's license to provide proof of licensure. If the person performing the work is unable to furnish proof of licensure, the requesting person may report that fact to the board or the department.

(2) An employee of the department may issue a citation to and collect a fine, as provided in 37-69-310, from a person at a job site where the person is performing plumbing work if the person fails to display a plumber's license or proof of licensure at the request of the department inspector.

History: En. Sec. 2, Ch. 368, L. 1995; amd. Sec. 7, Ch. 402, L. 1999.

Compiler's Comments

1999 Amendment: Chapter 402 inserted (2) authorizing department to issue citation and collect fine; and made minor changes in style. Amendment effective July 1, 1999.

37-69-320. License and endorsement discipline. (1) The board may revoke, suspend, restrict, censure, or apply any other disciplinary treatment contemplated by 37-1-136 to any occupational licensee or endorsee under this chapter for any one or more of the following causes:

(a) performance of plumbing work in the field of plumbing that is below the standards established by the Uniform Plumbing Code;

(b) inadequate supervision that causes or allows plumbing work in the field of plumbing that is below the standards established by the Uniform Plumbing Code;

(c) material deceit in procuring, attempting to procure, or aiding and abetting the procurement of an occupational license or endorsement to practice in the field of plumbing;

(d) unfitness to provide services in the field of plumbing by reason of negligence or addiction to the use of habit-forming drugs;

(e) physical or mental incompetence that impairs the licensee's or endorsee's ability to deliver adequate service in the field of plumbing;

(f) willful or repeated violation of this chapter or rules adopted under this chapter or willful or repeated violation of Title 50, chapter 60, part 5, or rules adopted under that part; or

(g) unprofessional practice-related conduct as defined by rules adopted by the board.

(2) Any licensee or endorsee disciplinary action under the jurisdiction of the board must be conducted as a contested case under the provisions of the Montana Administrative Procedure Act.

History: En. Sec. 6, Ch. 661, L. 1985; amd. Sec. 3, Ch. 221, L. 1995.

37-69-321. Repealed. Sec. 8, Ch. 661, L. 1985.

History: (1)En. Sec. 8, Ch. 203, L. 1949; Sec. 66-2408, R.C.M. 1947; (2)En. Sec. 8, Ch. 251, L. 1959; amd. Sec. 10, Ch. 497, L. 1975; Sec. 66-2419, R.C.M. 1947; R.C.M. 1947, 66-2408, 66-2419.

37-69-322. Repealed. Sec. 128, Ch. 429, L. 1995.

History: (1), (2)En. Sec. 9, Ch. 251, L. 1959; amd. Sec. 238, Ch. 350, L. 1974; amd. Sec. 11, Ch. 497, L. 1975; Sec. 66-2420, R.C.M. 1947; (3)En. Sec. 11, Ch. 251, L. 1959; amd. Sec. 239, Ch. 350, L. 1974; Sec. 66-2422, R.C.M. 1947; R.C.M. 1947, 66-2420, 66-2422.

37-69-323. Restrictions on and responsibility for employees of master plumber. A licensed master plumber may employ only apprentice plumbers registered with the state department of labor and industry and only journeyman plumbers who are licensed by the state of Montana. A master plumber is responsible for assuring that all work performed by such employees is in compliance with the state plumbing code.

History: En. Sec. 2, Ch. 203, L. 1949; amd. Sec. 1, Ch. 186, L. 1965; amd. Sec. 228, Ch. 350, L. 1974; amd. Sec. 3, Ch. 497, L. 1975; amd. Sec. 22, Ch. 101, L. 1977; R.C.M. 1947, 66-2402(part).

Cross-References

Apprenticeship, Title 39, ch. 6, part 1.

37-69-324. Penalty. A person who works at the field of plumbing or maintains or conducts a plumbing business or an individual who connects or disconnects plumbing from a public water or sewer system in violation of any provisions of this chapter or at a time when he is not exempt from the provisions of this chapter pursuant to the provisions of a duly enacted and subsisting ordinance of a city or town is guilty of a misdemeanor and, upon conviction thereof in any court of competent jurisdiction, is guilty of a misdemeanor. However, this chapter may not be construed to apply to or affect plumbing or pipefitting as indicated in the 37-69-102 exceptions.

History: En. Sec. 11, Ch. 203, L. 1949; amd. Sec. 4, Ch. 185, L. 1961; amd. Sec. 7, Ch. 497, L. 1975; amd. Sec. 23, Ch. 101, L. 1977; R.C.M. 1947, 66-2411; amd. Sec. 7, Ch. 661, L. 1985.

Cross-References

Misdemeanor defined, 45-2-101.

Criminal responsibility and accountability of corporations, 45-2-311, 45-2-312.

Misdemeanor penalty when none specified, 46-18-212.

Part 4
Medical Gas Piping

Part Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

Board of plumbers, 2-15-1875.

37-69-401. Medical gas piping installation endorsement. (1) A medical gas piping installation endorsement entitles the holder to install pipe used solely for transporting gases used for medical purposes.

(2) To be eligible for endorsement under this section, a person must meet all requirements for endorsements established by the board by rule.

(3) A person with a valid medical gas piping installation endorsement from another state may install medical gas piping in this state.

(4) The board shall by rule establish the requirements for obtaining a medical gas piping installation endorsement. Fees must be established by rule and must be commensurate with the costs of administering the medical gas piping installation endorsement program.

History: En. Sec. 1, Ch. 221, L. 1995.

37-69-402. Requirements for installation of medical gas piping. (1) After April 1, 1996, a person may not install pipe used solely to transport gases used for medical purposes unless the person holds a valid medical gas piping installation endorsement pursuant to 37-69-401.

(2) A violation of this section is punishable pursuant to 37-69-324.

History: En. Sec. 2, Ch. 221, L. 1995.

37-69-403. Proof of endorsement. (1) A state or local government plumbing code compliance inspector shall, as part of any inspection, request proof of medical gas piping installation endorsement from any person who is required to hold an endorsement under 37-69-402 or who, in the inspector's judgment, appears to be involved with onsite medical gas piping activity. The inspector shall report any instance of endorsement violation to the inspector's employing agency, and the employing agency shall report the violation to the board.

(2) An employee of a private or public employment agency or labor union, a person who is professionally responsible for a job site, or a person who holds a medical gas piping installation endorsement under Title 37, chapter 69, has the right to ask a person doing work on the job site that requires an endorsement to provide proof of endorsement. If the person performing the work is unable to furnish proof of endorsement, the requesting person may report that fact to the board or the department.

History: En. Sec. 2, Ch. 486, L. 1999.

Compiler's Comments

Effective Date: Section 4, Ch. 486, L. 1999, provided that this section is effective on passage and approval. Approved April 27, 1999.

CHAPTER 70

HEATING, VENTILATION, AIR CONDITIONING

(Repealed. Sec. 195, Ch. 575, L. 1981)

Chapter Compiler's Comments

Histories of Repealed Sections:

37-70-101. En. 66-3501 by Sec. 2, Ch. 504, L. 1975; R.C.M. 1947, 66-3501.

37-70-102. En. 66-3502 by Sec. 3, Ch. 504, L. 1975; R.C.M. 1947, 66-3502.

37-70-103. En. 66-3503 by Sec. 4, Ch. 504, L. 1975; R.C.M. 1947, 66-3503.

37-70-104. En. 66-3515 by Sec. 16, Ch. 504, L. 1975; R.C.M. 1947, 66-3515.

37-70-201. En. 82A-1602.29 by Sec. 1, Ch. 504, L. 1975; R.C.M. 1947, 82A-1602.29(5), (6).

37-70-202. En. 66-3504 by Sec. 5, Ch. 504, L. 1975; R.C.M. 1947, 66-3504.

37-70-203. En. 82A-1602.29 by Sec. 1, Ch. 504, L. 1975; R.C.M. 1947, 82A-1602.29(4); amd. Sec. 28, Ch. 22, L. 1979.

37-70-301. En. 66-3513 by Sec. 14, Ch. 504, L. 1975; R.C.M. 1947, 66-3513.

37-70-302. En. 66-3508 by Sec. 9, Ch. 504, L. 1975; R.C.M. 1947, 66-3508.

37-70-303. En. 66-3506 by Sec. 7, Ch. 504, L. 1975; R.C.M. 1947, 66-3506.

37-70-304. En. 66-3509 by Sec. 10, Ch. 504, L. 1975; R.C.M. 1947, 66-3509.

37-70-305. En. 66-3505 by Sec. 6, Ch. 504, L. 1975; amd. Sec. 31, Ch. 101, L. 1977; R.C.M. 1947, 66-3505.

37-70-306. En. 66-3511 by Sec. 12, Ch. 504, L. 1975; R.C.M. 1947, 66-3511.

37-70-307 through 37-70-310 reserved.

37-70-311. En. 66-3512 by Sec. 13, Ch. 504, L. 1975; R.C.M. 1947, 66-3512.

37-70-312. En. 66-3514 by Sec. 15, Ch. 504, L. 1975; R.C.M. 1947, 66-3514(part).

CHAPTER 71

PUBLIC CONTRACTORS

(Repealed. Sec. 11, Ch. 558, L. 1995)

Chapter Compiler's Comments

Histories of Repealed Sections:

37-71-101. (1)En. Sec. 1, Ch. 178, L. 1935; re-en. Sec. 2433.1, R.C.M. 1935; amd. Sec. 1, Ch. 195, L. 1967; amd. Sec. 12, Ch. 52, L. 1977; Sec. 84-3501, R.C.M. 1947; (2)En. Sec. 3, Ch. 178, L. 1935; re-en. Sec. 2433.3. R.C.M. 1935; amd. Sec. 143, Ch. 516, L. 1973; Sec. 84-3503, R.C.M. 1947; R.C.M. 1947, 84-3501, 84-3503(part); amd. Sec. 1, Ch. 152, L. 1983;

amd. Sec. 1, Ch. 240, L. 1983; MCA 1981, 15-50-101; redes. 37-71-101 by Code Commissioner, 1983; 37-71-101(3) redes. 15-50-101 by Code Commissioner, 1985.

37-71-102. En. Sec. 3, Ch. 178, L. 1935; re-en. Sec. 2433.3, R.C.M. 1935; amd. Sec. 143, Ch. 516, L. 1973; R.C.M. 1947, 84-3503(part); amd. Sec. 2, Ch. 240, L. 1983; MCA 1981, 15-50-102; redes. 37-71-102 by Code Commissioner, 1983.

37-71-103. En. Sec. 5, Ch. 195, L. 1967; amd. Sec. 145, Ch. 516, L. 1973; R.C.M. 1947, 84-3515(part); amd. Sec. 3, Ch. 240, L. 1983; MCA 1981, 15-50-103; redes. 37-71-103 by Code Commissioner, 1983.

37-71-104. En. Sec. 9, Ch. 178, L. 1935; re-en. Sec. 2433.9, R.C.M. 1935; R.C.M. 1947, 84-3509; amd. Sec. 4, Ch. 240, L. 1983; MCA 1981, 15-50-104; redes. 37-71-104 by Code Commissioner, 1983.

37-71-105. En. Sec. 8, Ch. 178, L. 1935; re-en. Sec. 2433.8, R.C.M. 1935; amd. Sec. 2, Ch. 266, L. 1971; R.C.M. 1947, 84-3508; amd. Sec. 5, Ch. 240, L. 1983; MCA 1981, 15-50-105; redes. 37-71-105 by Code Commissioner, 1983.

37-71-201. En. Sec. 2, Ch. 178, L. 1935; re-en. Sec. 2433.2, R.C.M. 1935; amd. Sec. 13, Ch. 52, L. 1977; R.C.M. 1947, 84-3502; MCA 1981, 15-50-201; redes. 37-71-201 by Code Commissioner, 1983.

37-71-202. En. Sec. 5, Ch. 178, L. 1935; re-en. Sec. 2433.5, R.C.M. 1935; amd. Sec. 1, Ch. 113, L. 1939; amd. Sec. 2, Ch. 195, L. 1967; amd. Sec. 1, Ch. 180, L. 1974; R.C.M. 1947, 84-3505(6); amd. Sec. 2, Ch. 152, L. 1983; MCA 1981, 15-50-202; redes. 37-71-202 by Code Commissioner, 1983.

37-71-203. En. Sec. 7, Ch. 178, L. 1935; re-en. Sec. 2433.7, R.C.M. 1935; amd. Sec. 3, Ch. 141, L. 1967; R.C.M. 1947, 84-3507; MCA 1981, 15-50-203; redes. 37-71-203 by Code Commissioner, 1983; amd. Sec. 1, Ch. 87, L. 1985.

37-71-204. En. Sec. 5, Ch. 178, L. 1935; re-en. Sec. 2433.5, R.C.M. 1935; amd. Sec. 1, Ch. 113, L. 1939; amd. Sec. 2, Ch. 195, L. 1967; amd. Sec. 1, Ch. 180, L. 1974; R.C.M. 1947, 84-3505(1) thru (4); amd. Sec. 6, Ch. 240, L. 1983; MCA 1981, 15-50-204; redes. 37-71-204 by Code Commissioner, 1983.

37-71-205 through 37-71-210 reserved.

37-71-211. En. Sec. 4, Ch. 178, L. 1935; re-en. Sec. 2433.4, R.C.M. 1935; R.C.M. 1947, 84-3504; amd. Sec. 9, Ch. 240, L. 1983; MCA 1981, 15-50-211; redes. 37-71-211 by Code Commissioner, 1983.

37-71-212. En. Sec. 6, Ch. 178, L. 1935; re-en. Sec. 2433.6, R.C.M. 1935; amd. Sec. 1, Ch. 113, L. 1937; R.C.M. 1947, 84-3506(part); amd. Sec. 10, Ch. 240, L. 1983; MCA 1981, 15-50-212; redes. 37-71-212 by Code Commissioner, 1983.

37-71-213. (1) thru (3)En. Sec. 6, Ch. 178, L. 1935; re-en. Sec. 2433.6, R.C.M. 1935; amd. Sec. 1, Ch. 113, L. 1937; Sec. 84-3506, R.C.M. 1947; (4)En. Sec. 11, Ch. 178, L. 1935; re-en. Sec. 2433.11, R.C.M. 1935; Sec. 84-3511, R.C.M. 1947; R.C.M. 1947, 84-3506(part), 84-3511; amd. Sec. 11, Ch. 240, L. 1983; MCA 1981, 15-50-213; redes. 37-71-213 by Code Commissioner, 1983.

37-71-301. En. Sec. 10, Ch. 178, L. 1935; re-en. Sec. 2433.10, R.C.M. 1935; amd. Sec. 1, Ch. 219, L. 1969; amd. Sec. 14, Ch. 52, L. 1977; R.C.M. 1947, 84-3510; amd. Sec. 12, Ch. 240, L. 1983; MCA 1981, 15-50-302; redes. 37-71-301 by Code Commissioner, 1983.

37-71-302. En. Sec. 12, Ch. 178, L. 1935; re-en. Sec. 2433.12, R.C.M. 1935; amd. Sec. 15, Ch. 52, L. 1977; R.C.M. 1947, 84-3512; MCA 1981, 15-50-303(1); redes. 37-71-302 by Code Commissioner, 1983; Sec. 37-71-302(2) redes. 15-50-301(2) by Code Commissioner, 1985.

CHAPTER 72

CONSTRUCTION BLASTING

Part 1 — General

37-72-101. Construction blasting restrictions — license required — definitions — exemptions.
37-72-102. Penalty — injunction.

Part 2 — Regulation by Department of Commerce

37-72-201. Rules for use of explosives — variances.
37-72-202. General rulemaking power.
37-72-203. Revocation, suspension, or refusal to renew license — grounds — procedure.

Part 3 — Licensing

37-72-301. General qualifications.

37-72-302. Training and experience requirements.
37-72-303. Licensure by examination — fee.
37-72-304. Issuance of license — fee.
37-72-305. Licensure of persons licensed by other jurisdictions.
37-72-306. Renewal.
37-72-307. License — form — pocket card.

Chapter Cross-References

Regulation of explosives and inflammable material by local governments, 7-33-4205.

Part 1
General

37-72-101. Construction blasting restrictions — license required — definitions — exemptions. (1) A person may not engage in the practice of construction blasting unless licensed or under the supervision of a person licensed as a construction blaster by the department.

(2) For the purposes of this chapter:

(a) "construction blaster" means a person who engages in construction blasting;

(b) "construction blasting" means the use of explosives to:

(i) reduce, destroy, or weaken any residential, commercial, or other building; or

(ii) excavate any ditch, trench, cut, or hole or reduce, destroy, weaken, or cause a change in grade of any land formation in the construction of any building, highway, road, pipeline, sewerline, or electric or other utility line;

(c) "department" means the department of commerce;

(d) "explosive" has the meaning given in 61-1-506.

(3) Nothing in this chapter applies to the private or commercial use of explosives by persons engaged in farming, ranching, logging, geophysical work, drilling or development of water, oil, or gas wells, or mining of any kind or to the private use of explosives in the removal of stumps and rocks from land owned by the person using the explosives, except that the persons exempted from this chapter by this subsection shall comply with rules adopted under 37-72-201(1)(c) and the provisions of 37-72-102 apply to a violation of those rules by an exempted person.

(4) This chapter does not apply to persons conducting blasting operations when the persons and operations are subject to rules adopted under 82-4-231(10)(e).

History: En. Sec. 1, Ch. 402, L. 1985; amd. Sec. 94, Ch. 370, L. 1987; amd. Sec. 54, Ch. 83, L. 1989; amd. Sec. 47, Ch. 613, L. 1989; amd. Sec. 1, Ch. 514, L. 1995.

Cross-References

Reckless or malicious use of explosives, 45-8-333.

Possession of explosives, 45-8-335.

37-72-102. Penalty — injunction. (1) A person convicted of violating any provision of this chapter or the rules of the department is guilty of a misdemeanor and shall be imprisoned in the county jail for a term not to exceed 6 months or fined an amount not to exceed $500, or both.

(2) The district court may enjoin any violation or threatened violation of the requirements of 37-72-101, 37-72-201, 37-72-202, or 37-72-301 through 37-72-307 or the rules of the department as a nuisance per se; and the department, the attorney general, or any county attorney may institute proceedings for an injunction.

History: En. Sec. 12, Ch. 402, L. 1985; amd. Sec. 64, Ch. 613, L. 1989.

Cross-References

Issuance of injunctions on nonjudicial days, 3-1-302, 3-5-302.

Contempts, Title 3, ch. 1, part 5.

Injunctions, Rule 65, M.R.Civ.P. (see Title 25, ch. 20); Title 27, ch. 19.

Part 2

Regulation by Department of Commerce

Part Cross-References

Montana Administrative Procedure Act, Title 2, ch. 4.

Destructive device and explosive defined, 45-8-332.

Reckless or malicious use of explosives, 45-8-333.

Possession of destructive device, 45-8-334.

Possession of explosives, 45-8-335.

Possession of bomb or similar device prima facie evidence of unlawful purpose, 45-8-337.

37-72-201. Rules for use of explosives — variances. (1) The department shall adopt rules governing the use of explosives in construction blasting. The rules must include provisions to:

(a) regulate the method of withdrawal of explosives from the construction magazine in which they are kept;

(b) prevent the accidental detonation of explosives;

(c) prevent injury from blasting to persons and property near blast sites;

(d) provide for notification of blasting to the owners or operators of gas and electric utilities; and

(e) regulate the drilling of holes for explosives and the loading and firing of explosives.

(2) The department shall adopt rules providing for variances from the rules required by subsection (1). Variances may be granted by the department on a case-by-case basis for the purpose of individual construction blasting operations only if it is shown by the affidavit of a construction blaster licensed under this chapter that:

(a) compliance with the rule for which a variance is sought would be impracticable; and

(b) the proposed variance from department rules will not constitute a danger to property or public safety.

History: En. Sec. 9, Ch. 402, L. 1985; amd. Sec. 64, Ch. 613, L. 1989.

37-72-202. General rulemaking power. The department shall adopt rules to:

(1) implement the training and experience requirements of 37-72-302;

(2) prescribe the amount of the fees provided for in 37-72-301 and 37-72-303 through 37-72-306, which must be nonrefundable, in an amount commensurate with the cost of administering this chapter, and deposited in the state special revenue fund for the use of the department;

(3) regulate the use of explosives and grant variances under the provisions of 37-72-201, except that, unless the department is making an investigation

under 37-72-203(2), the department does not have the power under this chapter to make inspections into construction blasting and may not adopt rules providing for such inspections or for inspectors to carry out such inspections;

(4) provide for the form of the license and pocket card provided for in 37-72-307; and

(5) provide for the conduct of the business of the department under this chapter and govern its proceedings under 37-72-203.

History: En. Sec. 10, Ch. 402, L. 1985; amd. Sec. 64, Ch. 613, L. 1989.

37-72-203. Revocation, suspension, or refusal to renew license — grounds — procedure. (1) The department may reprimand or revoke, suspend, or refuse to renew the license of a person found guilty of:

(a) fraud or deceit in obtaining a license;

(b) gross negligence, incompetency, or misconduct in the practice of construction blasting;

(c) a felony involving the use of explosives; or

(d) violation of the rules of the department.

(2) A person may make charges under subsection (1) against a licensee. The charges must be made by affidavit, subscribed and sworn to by the person making them, and filed with the department. The charges must be investigated by the department. Unless the department, after investigation, dismisses the charges as unfounded or trivial, it shall within 6 months after the date on which the charges were made give notice by mail to the licensee of its intent to reprimand him or to revoke, suspend, or refuse to renew his license. The notice must contain those matters required by the Montana Administrative Procedure Act.

(3) The department may require a licensee to take a written or oral examination, or both, in a proceeding to reprimand or to revoke, suspend, or refuse to renew a license.

History: En. Sec. 11, Ch. 402, L. 1985; amd. Sec. 64, Ch. 613, L. 1989.

Cross-References

Montana Administrative Procedure Act, Title 2, ch. 4.

"Destructive device" and "explosive" defined, 45-8-332.

Reckless or malicious use of explosives, 45-8-333.

Possession of destructive device, 45-8-334.

Possession of explosives, 45-8-335.

Possession of bomb or similar device prima facie evidence of unlawful purpose, 45-8-337.

Part 3
Licensing

Part Cross-References

Grounds for disciplinary action as grounds for license denial — conditions to new licenses, 37-1-137.

37-72-301. General qualifications. A person making initial application to the department for a license as a construction blaster shall:

(1) pay an application fee to the department; and

(2) furnish proof under oath, on a form provided by the department, that he:

(a) is at least 18 years old;

(b) is of good moral character;

(c) has not been convicted of a felony or misdemeanor involving the use of explosives;

(d) is not addicted to narcotic drugs or intemperate in the use of alcohol; and

(e) has satisfied the requirements for training and experience in construction blasting established by 37-72-302 and the rules of the department.

History: En. Sec. 2, Ch. 402, L. 1985; amd. Sec. 64, Ch. 613, L. 1989.

37-72-302. Training and experience requirements. (1) A person applying for licensure as a construction blaster shall furnish proof, under oath, on a form provided by the department, that the person has:

(a) successfully completed a training program in construction blasting that has been recognized by the explosives or construction industry and approved by the department; and

(b) at least 2 years of experience in construction blasting and because of that experience is familiar with the practical aspects of construction blasting.

(2) A training program may not be approved by the department unless the program offers comprehensive instruction in types of explosives, methods and purposes of their use, and safety and storage. The department shall by rule adopt a list of approved training programs.

History: En. Sec. 3, Ch. 402, L. 1985; amd. Sec. 64, Ch. 613, L. 1989; amd. Sec. 1, Ch. 100, L. 1997.

37-72-303. Licensure by examination — fee. (1) The department shall, at least once a year, administer an examination to applicants meeting the requirements of 37-72-301 and 37-72-302 and the rules adopted by the department. The department shall determine the subjects, scope, and acceptable level of performance for all examinations. The examination may be written, oral, or both. The examination shall at a minimum test the applicant's knowledge of the rules of the department governing construction blasting.

(2) An applicant for licensure by examination shall pay an examination fee to the department.

(3) An applicant for a license who has previously taken and failed the examination required by this section may retake it at any time within 2 years without again furnishing proof of compliance with 37-72-302, upon payment to the department of a reexamination fee.

History: En. Sec. 4, Ch. 402, L. 1985; amd. Sec. 64, Ch. 613, L. 1989.

37-72-304. Issuance of license — fee. Upon receipt of a license fee, the department shall issue a license to each person who meets the requirements for licensure as prescribed in this chapter. The license must include the dates of issuance and expiration and a serial number. It must be signed by the department.

History: En. Sec. 5, Ch. 402, L. 1985; amd. Sec. 64, Ch. 613, L. 1989.

37-72-305. Licensure of persons licensed by other jurisdictions. Upon receipt of a license fee, the department shall issue a license to any person fulfilling the requirements of 37-72-301(2)(a) through (2)(d) who holds a certificate, license, or permit, issued by another state or any agency of the United States, allowing him to supervise or engage in the practice of construction blasting if the department finds that the certificate, license, or permit was issued upon the satisfactory completion of requirements substantially equivalent to the requirements of 37-72-301 through 37-72-303.

History: En. Sec. 6, Ch. 402, L. 1985; amd. Sec. 64, Ch. 613, L. 1989.

37-72-306. Renewal. (1) A license issued under this chapter expires and is invalid after the renewal date established by the department by rule. The department shall notify each person licensed under this chapter of the date of the expiration of the person's license and the amount of the license renewal fee. The notice must be mailed to each licensed construction blaster at the blaster's listed address at least 1 month before the expiration of the blaster's license.

(2) Renewal may be made by application during the 60 days prior to the expiration date. Failure on the part of a licensee to pay the renewal fee by the expiration date does not deprive the licensee of the right to renew the licensee's license, but the fee must be increased 10% for each month or major portion of a month that the payment of the renewal fee is delayed after the expiration date. The maximum fee for delayed renewal may not exceed twice the normal renewal fee. Application for renewal following a lapse of 1 year or more is subject to review by the department, and the applicant may be required to successfully complete an examination.

History: En. Sec. 7, Ch. 402, L. 1985; amd. Sec. 64, Ch. 613, L. 1989; amd. Sec. 52, Ch. 492, L. 1997.

37-72-307. License — form — pocket card. (1) The department shall prescribe the form of license.

(2) The department shall annually prepare and deliver a pocket card certifying that the person whose name appears on the card is a licensed construction blaster and stating the period for which fees have been paid.

History: En. Sec. 8, Ch. 402, L. 1985; amd. Sec. 64, Ch. 613, L. 1989.

CHAPTERS 73 AND 74

RESERVED

CHAPTER 75

DIRECT-ENTRY MIDWIFERY

(Renumbered by Code Commissioner, 1991)

Chapter Compiler's Comments

Sections Renumbered:

37-75-101. Renumbered 37-27-111.
37-75-102. Not codified.

Histories of Sections Not Codified:

37-75-102. En. Sec. 2, Ch. 493, L. 1989.

TITLE 38

RESERVED

TITLE 39

LABOR

Ch.
1. Department of Labor and Industry.
2. The Employment Relationship.
3. Wages and Wage Protection.
4. Hours of Labor in Certain Employments.
5. The Employment Agency Act. Repealed. Sec. 4, Ch. 365, L. 1981; Sec. 128, Ch. 429, L. 1995.
6. Apprenticeship.
7. Women in Employment — Displaced Homemakers.
8. Professional Employer Organizations and Groups Licensing.
9. Contractor Registration.
Chapters 10 through 28 reserved.
29. Veterans' Public Employment Preference.
30. Persons With Disabilities Employment Preference.
31. Collective Bargaining for Public Employees.
32. Collective Bargaining for Nurses.
33. General Limitations on Collective Bargaining Rights.
34. Arbitration for Firefighters.
Chapters 35 through 50 reserved.
51. Unemployment Insurance.
Chapters 52 through 70 reserved.
71. Workers' Compensation.
72. Occupational Disease Act of Montana.
73. Silicosis Benefits.

CHAPTER 1

DEPARTMENT OF LABOR AND INDUSTRY

Part 1 — General Provisions

39-1-101. Definitions.
39-1-102. Duties of department.
39-1-103. Powers of department.
39-1-104. Cooperation with federal government.

Part 1

General Provisions

39-1-101. Definitions. As used in this chapter, unless the context requires otherwise the following definitions apply:

(1) "Commissioner" means the commissioner of labor and industry as provided for in 2-15-1701.

(2) "Department" means the department of labor and industry as provided for in 2-15-1701.

History: En. 39-1-101 by Sec. 1, Ch. 397, L. 1979.

39-1-102. Duties of department. The department shall enforce all the laws of Montana relating to hours of labor, conditions of labor, prosecution of employers who default in payment of wages, protection of employees, and all laws relating to child labor that regulate the employment of children in any manner and shall administer the laws of the state relating to free employment offices and all other state labor laws. The department shall investigate and enforce the laws prohibiting discrimination contained in Title 49, chapters 2 and 3, and provide a means for conciliation between parties.

History: **En. Sec. 5, Ch. 177, L. 1951; amd. Sec. 1, Ch. 451, L. 1975; R.C.M. 1947, 41-1605(1); amd. Sec. 2, Ch. 397, L. 1979; amd. Sec. 3, Ch. 467, L. 1997.**

Cross-References

Eight-hour day maximum, Art. XII, sec. 2, Mont. Const.

Free public employment offices, 39-51-307.

Child Labor Standards Act, Title 41, ch. 2, part 1.

39-1-103. Powers of department. (1) In discharging the duties imposed upon the department, the commissioner or his authorized representatives may administer oaths, examine witnesses under oath, take depositions or cause same to be taken, deputize any citizen 18 years of age or older to serve subpoenas upon witnesses, and issue subpoenas for the attendance of witnesses before him in the same manner as for attendance before district courts.

(2) The commissioner may likewise cause to be inspected any mine, factory, workshop, smelter, mill, warehouse, elevator, foundry, machine shop, or other industrial establishment.

(3) Nothing in this chapter applies to labor violations preempted by federal law or regulation.

History: **En. Sec. 5, Ch. 177, L. 1951; amd. Sec. 1, Ch. 451, L. 1975; R.C.M. 1947, 41-1605(2); amd. Sec. 50, Ch. 613, L. 1989.**

Cross-References

Contested case procedure, Title 2, ch. 4, part 6.

Subpoena, Rule 45, M.R.Civ.P. (see Title 25, ch. 20).

Workers' Compensation Act, Title 39, ch. 71.

39-1-104. Cooperation with federal government. The department may and is hereby authorized to assist and cooperate with the wage and hour division and the children's bureau, U.S. department of labor, in the enforcement within this state of the Fair Labor Standards Act of 1938, approved June 25, 1938, and, subject to the regulations of the administrator of the wage and hour division or the chief of the children's bureau, as the case may be, and the laws of the state applicable to the receipt and expenditure of moneys, may be reimbursed by said wage and hour division or said children's bureau for the reasonable cost of such assistance and cooperation.

History: **En. Sec. 1, Ch. 56, L. 1939; R.C.M. 1947, 41-1137.**

CHAPTER 2

THE EMPLOYMENT RELATIONSHIP

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Chapter Cross-References

Veterans — reemployment, Title 10, ch. 2, part 2.

Uniform Arbitration Act, Title 27, ch. 5.

Labor disputes — injunctions not allowed, 27-19-103.

Veterans' public employment preference, Title 39, ch. 29.

Persons with disabilities public employment preference, Title 39, ch. 30.

Child labor, Title 41, ch. 2.

Part 1

General Provisions

39-2-101. Employment defined. The contract of employment is a contract by which one, who is called the employer, engages another, who is called the employee, to do something for the benefit of the employer or a third person.

History: En. Sec. 2650, Civ. C. 1895; re-en. Sec. 5241, Rev. C. 1907; re-en. Sec. 7756, R.C.M. 1921; Cal. Civ. C. Sec. 1965; Field Civ. C. Sec. 1004; re-en. Sec. 7756, R.C.M. 1935; R.C.M. 1947, 41-101.

39-2-102. What belongs to employer. Everything which an employee acquires by virtue of his employment, except the compensation, if any, which is due to him from his employer, belongs to the latter, whether acquired lawfully or unlawfully or during or after the expiration of the term of his employment.

History: En. Sec. 2680, Civ. C. 1895; re-en. Sec. 5263, Rev. C. 1907; re-en. Sec. 7778, R.C.M. 1921; Cal. Civ. C. Sec. 1985; Field Civ. C. Sec. 1018; re-en. Sec. 7778, R.C.M. 1935; R.C.M. 1947, 41-211.

39-2-103. Confidential employment. The obligations peculiar to confidential employments are defined in the laws relating to trusts and fiduciary relationships.

History: En. Sec. 2687, Civ. C. 1895; re-en. Sec. 5270, Rev. C. 1907; re-en. Sec. 7785, R.C.M. 1921; Cal. Civ. C. Sec. 1992; Field Civ. C. Sec. 1025; re-en. Sec. 7785, R.C.M. 1935; R.C.M. 1947, 41-218; amd. Sec. 3, Ch. 397, L. 1979.

Cross-References

Trust Code, Title 72, ch. 33 through 36.

Part 2

General Obligations of Employers

Part Cross-References

Hazardous chemicals in workplace, Title 50, ch. 78.

39-2-201. Seats for employees. (1) Every employer in any manufacturing, mechanical, or mercantile establishment; laundry, hotel, or restaurant; or other establishment employing any person shall provide suitable seats for all employees and shall permit them to use such seats when they are not employed in the active duties of their employment.

(2) Any employer who shall fail, neglect, or refuse to provide suitable seats, as provided in this section, or who shall permit or suffer any overseer, superintendent, or other agent of any such employer to violate any of the provisions of this section shall be guilty of a misdemeanor and upon conviction thereof shall be fined for each offense not less than $50 or more than $200 or be imprisoned in the county jail for a period of not less than 10 or more than 60 days or both such fine and imprisonment.

History: (1)En. Sec. 2, Ch. 108, L. 1913; amd. Sec. 2, Ch. 18, L. 1917; re-en. Sec. 2, Ch. 70, L. 1917; re-en. Sec. 3077, R.C.M. 1921; re-en. Sec. 3077, R.C.M. 1935; amd. Sec. 22, Ch. 535, L. 1975; Sec. 41-1119, R.C.M. 1947; (2)En. Sec. 3, Ch. 108, L. 1913; amd. Sec. 3, Ch. 18, L. 1917; re-en. Sec. 3, Ch. 70, L. 1917; re-en. Sec. 3078, R.C.M. 1921; re-en. Sec. 3078, R.C.M. 1935; amd. Sec. 1, Ch. 51, L. 1971; Sec. 41-1120, R.C.M. 1947; R.C.M. 1947, 41-1119, 41-1120.

Cross-References

Classification of offenses, 45-1-201.

Misdemeanor defined, 45-2-101.

39-2-202 through 39-2-204 reserved.

39-2-205. Short title. Sections 39-2-205 through 39-2-211 may be cited as the "Workforce Drug and Alcohol Testing Act".

History: En. Sec. 1, Ch. 521, L. 1997.

39-2-206. Definitions. As used in 39-2-205 through 39-2-211, the following definitions apply:

(1) "Alcohol" means an intoxicating agent in alcoholic beverages, ethyl alcohol, also called ethanol, or the hydrated oxide of ethyl.

(2) "Alcohol concentration" means the alcohol in a volume of breath expressed in terms of grams of alcohol per 210 liters of breath, as indicated by an evidential breath test.

(3) "Controlled substance" means a dangerous drug, as defined in 49 CFR, part 40, except a drug used pursuant to a valid prescription or as authorized by law.

(4) "Employee" means an individual engaged in the performance, supervision, or management of work in a hazardous work environment, security position, position affecting public safety, or fiduciary position for an

employer and does not include an independent contractor. The term includes an elected official.

(5) "Employer" means a person or entity that has one or more employees and that is located in or doing business in Montana.

(6) "Hazardous work environment" includes but is not limited to positions:

(a) for which controlled substance and alcohol testing is mandated by federal law, such as aviation, commercial motor carrier, railroad, pipeline, and commercial marine employees;

(b) that involve the operation of or work in proximity to construction equipment, industrial machinery, or mining activities; or

(c) that involve handling or proximity to flammable materials, explosives, toxic chemicals, or similar substances.

(7) "Medical review officer" means a licensed physician trained in the field of substance abuse.

(8) "Prospective employee" means an individual who has made a written or oral application to an employer to become an employee.

(9) "Qualified testing program" means a program to test for the presence of controlled substances and alcohol that meets the criteria set forth in 39-2-207 and 39-2-208.

(10) "Sample" means a urine specimen to determine the presence of a controlled substance or a breath alcohol test to determine the presence of alcohol.

History: En. Sec. 2, Ch. 521, L. 1997.

39-2-207. Qualified testing program. A qualified testing program must comply with the following criteria:

(1) Testing must be conducted according to the terms of written policies and procedures that must be adopted by the employer and must be available for review by all employees 60 days before the terms are implemented or changed. Controlled substance and alcohol testing procedures must conform to 49 CFR, part 40. At a minimum, the policies and procedures must require:

(a) a description of the applicable legal sanctions under federal, state, and local law for the unlawful manufacture, distribution, possession, or use of a controlled substance;

(b) the employer's program for regularly educating or providing information to employees on the health and workplace safety risks associated with the use of controlled substances and alcohol;

(c) the employer's standards of conduct that regulate the use of controlled substances and alcohol by employees;

(d) a description of available employee assistance programs, including drug and alcohol counseling, treatment, or rehabilitation programs that are available to employees;

(e) a description of the sanctions that the employer may impose on an employee if the employee is found to have violated the standards of conduct referred to in subsection (1)(c) or if the employee is found to test positive for the presence of a controlled substance or alcohol;

(f) identification of the types of controlled substance and alcohol tests to be used from the types of tests listed in 39-2-208;

(g) a list of controlled substances for which the employer intends to test and a stated alcohol concentration level above which a tested employee must be sanctioned;

(h) a description of the employer's hiring policy with respect to prospective employees who test positive;

(i) a detailed description of the procedures that will be followed to conduct the testing program, including the resolution of a dispute concerning test results;

(j) a provision that all information, interviews, reports, statements, memoranda, and test results are confidential communications that may not be disclosed to anyone except:

(i) the tested employee;

(ii) the designated representative of the employer; or

(iii) in connection with any legal or administrative claim arising out of the employer's implementation of 39-2-205 through 39-2-211 or in response to inquiries relating to a workplace accident involving death, physical injury, or property damage in excess of $1,500, when there is reason to believe that the tested employee may have caused or contributed to the accident; and

(k) a provision that information obtained through testing that is unrelated to the use of a controlled substance or alcohol must be held in strict confidentiality by the medical review officer and may not be released to the employer.

(2) In addition to imposing appropriate sanctions on an employee for violation of the employer's standards of conduct, an employer may require an employee who tests positive on a test for controlled substances or alcohol to participate in an appropriate drug or alcohol counseling, treatment, or rehabilitation program as a condition of continued employment. An employer may require the employee to submit to periodic followup testing as a condition of the counseling, treatment, or rehabilitation program.

(3) Testing must be at the employer's expense, and all employees must be compensated at the employee's regular rate, including benefits, for time attributable to the testing program.

(4) The collection, transport, and confirmation testing of urine samples must be performed in accordance with 49 CFR, part 40.

(5) Before an employer may take any action based on a positive test result, the employer shall have the results reviewed and certified by a medical review officer who is trained in the field of substance abuse. An employee or prospective employee must be given the opportunity to provide notification to the medical review officer of any medical information that is relevant to interpreting test results, including information concerning currently or recently used prescription or nonprescription drugs.

(6) Breath alcohol tests must be administered by a certified breath alcohol technician and may only be conducted using testing equipment that appears on the list of conforming products published in the Federal Register.

(7) A breath alcohol test result must indicate an alcohol concentration of greater than 0.04 for a person to be considered as having alcohol in the person's body.

History: **En. Sec. 3, Ch. 521, L. 1997.**

39-2-208. Qualified testing program — allowable types — procedures. Each of the following activities is permissible in the implementation of a qualified testing program:

(1) An employer may test any prospective employee as a condition of hire.

(2) An employer may use random testing if the employer's controlled substance and alcohol policy includes one or both of the following procedures:

(a) An employer or an employer's representative may establish a date when all salaried and wage-earning employees will be required to undergo controlled substance or alcohol tests, or both.

(b) An employer may manage or contract with a third party to establish and administer a random testing process that must include:

(i) an established calendar period for testing;

(ii) an established testing rate within the calendar period;

(iii) a random selection process that will determine who will be tested on any given date during the calendar period for testing;

(iv) all supervisory and managerial employees in the random selection and testing process; and

(v) a procedure that requires the employer to obtain a signed statement from each employee that confirms that the employee has received a written description of the random selection process and that requires the employer to maintain the statement in the employee's personnel file. The selection of employees in a random testing procedure must be made by a scientifically valid method, such as a random number table or a computer-based random number generator table.

(3) An employer may require an employee to submit to followup tests if the employee has had a verified positive test for a controlled substance or for alcohol. The followup tests must be described in the employer's controlled substance and alcohol policy and may be conducted for up to 1 year from the time that the employer first requires a followup test.

(4) An employer may require an employee to be tested for controlled substances or alcohol if the employer has reason to suspect that an employee's faculties are impaired on the job as a result of the use of a controlled substance or alcohol consumption. An employer shall comply with the supervisory training requirement in 49 CFR, part 382.603, whenever the employer requires a test on the basis of reasonable suspicion.

(5) An employer may require an employee to be tested for controlled substances or alcohol if the employer has reason to believe that the employee's act or failure to act is a direct or proximate cause of a work-related accident that has caused death or personal injury or property damage in excess of $1,500.

History: En. Sec. 4, Ch. 521, L. 1997.

39-2-209. Employee's right of rebuttal. The employer shall provide an employee who has been tested under any qualified testing program described in 39-2-208 with a copy of the test report. The employer is also required to obtain, at the employee's request, an additional test of the urine split sample by an independent laboratory selected by the person tested. The employer shall pay for the additional tests if the additional test results are negative, and the employee shall pay for the additional tests if the additional test results are positive. The employee must be provided the opportunity to rebut or explain the results of any test.

History: **En. Sec. 5, Ch. 521, L. 1997.**

39-2-210. Limitation on adverse action. No adverse action, including followup testing, may be taken by the employer if the employee presents a reasonable explanation or medical opinion indicating that the original test results were not caused by illegal use of controlled substances or by alcohol consumption. If the employee presents a reasonable explanation or medical opinion, the test results must be removed from the employee's record and destroyed.

History: **En. Sec. 6, Ch. 521, L. 1997.**

39-2-211. Confidentiality of results. (1) Except as provided in subsection (2) and except for information that is required by law to be reported to a state or federal licensing authority, all information, interviews, reports, statements, memoranda, or test results received by an employer through a qualified testing program are confidential communications and may not be used or received in evidence, obtained in discovery, or disclosed in any public or private proceeding.

(2) Material that is confidential under subsection (1) may be used in a proceeding related to:

(a) legal action arising out of an employer's implementation of 39-2-205 through 39-2-211; or

(b) inquiries relating to a workplace accident involving death, physical injury, or property damage in excess of $1,500 when there is reason to believe that the tested employee may have caused or contributed to the accident.

History: **En. Sec. 7, Ch. 521, L. 1997.**

Part 3

General Prohibitions on Employers

Part Cross-References

Employment defined, 35-2-101.

Employer may not discharge, discipline, or refuse to hire person because of imposition of income withholding, 40-5-422.

39-2-301. Unlawful for employer to require employee to pay cost of medical examination as condition of employment. (1) It shall be unlawful for any employer to require any employee or applicant for employment to pay the cost of a medical examination or the cost of furnishing any records of such examination as a condition of employment.

(2) The term "employer", as used in this section, shall mean and include an individual, a partnership, an association, a corporation, a legal representative, trustee, receiver, trustee in bankruptcy, and any common carrier by rail, motor, water, air, or express company doing business in or operating within the state.

(3) The term "employee", as used in this section, shall mean and include any person who may be permitted, required, or directed by any employer, as defined in subsection (2) of this section, in consideration of direct or indirect gain or profit to engage in any employment.

(4) Any employer violating the provisions of this section shall be guilty of a misdemeanor and upon conviction thereof shall be punished by a fine in any sum not exceeding $100 for each such offense.

History: En. Secs. 1, 2, 3, 4, Ch. 47, L. 1953; R.C.M. 1947, 41-113, 41-114, 41-115, 41-116.

Cross-References

Classification of offenses, 45-1-201.

Misdemeanor defined, 45-2-101.

39-2-302. Discharge or layoff of employee because of attachment or garnishment prohibited. No employer shall discharge or lay off an employee because of attachment or garnishment served on the employer against the wages of the employee.

History: En. Sec. 1, Ch. 245, L. 1969; R.C.M. 1947, 41-305.1.

Cross-References

Partial exemption of wages from execution, 25-13-614.

39-2-303. Deception as to character of employment, conditions of work, or existence of labor dispute prohibited. (1) No one doing business in this state shall induce, influence, persuade, or engage workmen to change from one place to another in this state through or by means of deception, misrepresentation, or false advertising concerning the kind or character of the work, the sanitary or other conditions of employment, or as to the existence of a strike or other trouble pending between the employer and the employees at the time of or immediately prior to such engagement. Failure to state in any advertisement, proposal, or contract for the employment of workmen that there is a strike, lockout, or other labor trouble at the place of the proposed employment when in fact such strike, lockout, or other trouble then actually exists at such place shall be deemed a false advertisement and misrepresentation for the purpose of this section.

(2) Any workman influenced, induced, persuaded, or engaged through or by means of any of the things prohibited by subsection (1) of this section has a right of action for recovery of all damages that he had sustained in consequence of the deception, misrepresentation, or false advertising used to induce him to change his place of employment against anyone directly or indirectly procuring such change, and in addition thereto, he shall recover reasonable attorneys' fees to be fixed by the court and taxed as costs in any judgment recovered.

History: En. 41-118 by Sec. 2, Ch. 513, L. 1973; R.C.M. 1947, 41-118.

Cross-References

Attorney fees, Title 25, ch. 10, part 3.

39-2-304. Lie detector tests prohibited. A person, firm, corporation, or other business entity or its representative may not require a person to take a polygraph test or any form of a mechanical lie detector test as a condition for employment or continuation of employment.

History: En. Secs. 1, 2, Ch. 46, L. 1974; R.C.M. 1947, 41-119, 41-120; amd. Sec. 1, Ch. 482, L. 1987; amd. Sec. 1, Ch. 477, L. 1991; amd. Sec. 7, Ch. 358, L. 1995; amd. Sec. 1, Ch. 445, L. 1995; amd. Sec. 8, Ch. 521, L. 1997.

Cross-References

Right to equal protection of laws, Art. II, sec. 4, Mont. Const.

Classification of offenses, 45-1-201.

Misdemeanor defined, 45-2-101.

Penalty for misdemeanor, 46-18-212.

39-2-305. Employment of aliens not lawfully authorized to accept employment prohibited. (1) No employer may knowingly employ an alien who is not lawfully authorized to accept employment.

(2) A person convicted of violating this section shall be fined no more than $300.

(3) The department of labor and industry or a person harmed by a violation of this section may sue to enjoin an employer from violating this section and to gain other appropriate relief.

History: En. 41-121 by Sec. 1, Ch. 56, L. 1977; R.C.M. 1947, 41-121.

Cross-References

Injunctions, Title 27, ch. 19.

Classification of offenses, 45-1-201.

Misdemeanor defined, 45-2-101.

39-2-306. Employment of persons under eighteen as bartenders prohibited. (1) No person under 18 years of age shall be employed as a bartender, waiter, or waitress whose duty is to serve customers purchasing liquors, beer, or wines in any establishment which sells liquors, beer, or wines at retail.

(2) Any retail vendor of liquors, beer, or wines who employs any such person under the age of 18 years is guilty of a misdemeanor.

History: (1)En. Sec. 1, Ch. 114, L. 1941; amd. Sec. 11, Ch. 240, L. 1971; amd. Sec. 17, Ch. 94, L. 1973; Sec. 41-1135, R.C.M. 1947; (2)En. Sec. 2, Ch. 114, L. 1941; amd. Sec. 12, Ch. 240, L. 1971; amd. Sec. 18, Ch. 94, L. 1973; Sec. 41-1136, R.C.M. 1947; R.C.M. 1947, 41-1135, 41-1136.

Cross-References

Age of majority, Art. II, sec. 14, Mont. Const.

Alcoholic beverages — age restrictions, 16-3-301, 16-6-305.

Classification of offenses, 45-1-201.

Misdemeanor defined, 45-2-101.

Penalty for misdemeanor, 46-18-212.

39-2-307 through 39-2-312 reserved.

39-2-313. Discrimination prohibited for use of lawful product during nonworking hours — exceptions. (1) For purposes of this section, "lawful product" means a product that is legally consumed, used, or enjoyed and includes food, beverages, and tobacco.

(2) Except as provided in subsections (3) and (4), an employer may not refuse to employ or license and may not discriminate against an individual with respect to compensation, promotion, or the terms, conditions, or privileges of employment because the individual legally uses a lawful product off the employer's premises during nonworking hours.

(3) Subsection (2) does not apply to:

(a) use of a lawful product that:

(i) affects in any manner an individual's ability to perform job-related employment responsibilities or the safety of other employees; or

(ii) conflicts with a bona fide occupational qualification that is reasonably related to the individual's employment;

(b) an individual who, on a personal basis, has a professional service contract with an employer and the unique nature of the services provided authorizes the employer, as part of the service contract, to limit the use of certain products; or

(c) an employer that is a nonprofit organization that, as one of its primary purposes or objectives, discourages the use of one or more lawful products by the general public.

(4) An employer does not violate this section if the employer takes action based on the belief that the employer's actions are permissible under an established substance abuse or alcohol program or policy, professional contract, or collective bargaining agreement.

(5) An employer may offer, impose, or have in effect a health, disability, or life insurance policy that makes distinctions between employees for the type or price of coverage based on the employees' use of a product if:

(a) differential rates assessed against employees reflect actuarially justified differences in providing employee benefits;

(b) the employer provides an employee with written notice delineating the differential rates used by the employer's insurance carriers; and

(c) the distinctions in the type or price of coverage are not used to expand, limit, or curtail the rights or liabilities of a party in a civil cause of action.

History: En. Sec. 1, Ch. 193, L. 1993.

Cross-References

Discrimination in employment, 49-2-303.

39-2-314. Civil action limitation. (1) Except as provided in subsection (2), an individual who is discharged, discriminated against, or denied employment in violation of 39-2-313 may file a civil action against an employer within 1 year of the alleged violation and the court may require any reasonable measure to correct the discriminatory practice and to rectify the harm, pecuniary or otherwise, to the person discriminated against and may allow reasonable attorney fees to the prevailing party.

(2) Prior to filing a civil action under subsection (1), an employee shall, within 120 days of the alleged violation, initiate any internal grievance procedure available. If a grievance procedure is not exhausted within 120 days, the employee may file a civil action.

History: En. Sec. 2, Ch. 193, L. 1993.

Cross-References

Wrongful discharge from employment, Title 39, ch. 2, part 9.

Enforcement by Commission, Title 49, ch. 2, part 5.

Part 4

General Obligations of Employees

39-2-401. Duties of gratuitous employee. (1) One who without consideration undertakes to do a service for another is not bound to perform the same, but if he actually enters upon its performance, he must use at least slight care and diligence therein.

(2) One who by his own special request induces another to entrust him with the performance of a service must perform the same fully. In other cases, one who undertakes a gratuitous service may relinquish it at any time.

(3) A gratuitous employee who accepts a written power of attorney must act under it so long as it remains in force or until he gives notice to his employer that he will not do so.

History: (1)En. Sec. 2670, Civ. C. 1895; re-en. Sec. 5253, Rev. C. 1907; re-en. Sec. 7768, R.C.M. 1921; Cal. Civ. C. Sec. 1975; Field Civ. C. Sec. 1008; re-en. Sec. 7768, R.C.M. 1935; Sec. 41-201, R.C.M. 1947; (2)En. Sec. 2671, Civ. C. 1895; re-en. Sec. 5254, Rev. C. 1907; re-en. Sec. 7769, R.C.M. 1921; Cal. Civ. C. Sec. 1976; Field Civ. C. Sec. 1009; re-en. Sec. 7769, R.C.M. 1935; Sec. 41-202, R.C.M. 1947; (3)En. Sec. 2672, Civ. C. 1895; re-en. Sec. 5255, Rev. C. 1907; re-en. Sec. 7770, R.C.M. 1921; Cal. Civ. C. Sec. 1977; Field Civ. C. Sec. 1010; re-en. Sec. 7770, R.C.M. 1935; Sec. 41-203, R.C.M. 1947; R.C.M. 1947, 41-201, 41-202, 41-203.

Cross-References

Good Samaritan law — accidents, 27-1-714.

Good Samaritan law — food donations, 27-1-716.

Revocation of power of attorney, 72-5-502.

39-2-402. Duties of employee for reward. One who for a good consideration agrees to serve another must perform the service and must use ordinary care and diligence therein so long as he is thus employed.

History: En. Sec. 2673, Civ. C. 1895; re-en. Sec. 5256, Rev. C. 1907; re-en. Sec. 7771, R.C.M. 1921; Cal. Civ. C. Sec. 1978; Field Civ. C. Sec. 1011; re-en. Sec. 7771, R.C.M. 1935; R.C.M. 1947, 41-204.

39-2-403. Duties of employee for his own benefit. One who is employed at his own request to do that which is more for his own advantage than for that of his employer must use great care and diligence therein to protect the interest of the latter.

History: En. Sec. 2674, Civ. C. 1895; re-en. Sec. 5257, Rev. C. 1907; re-en. Sec. 7772, R.C.M. 1921; Cal. Civ. C. Sec. 1979; Field Civ. C. Sec. 1012; re-en. Sec. 7772, R.C.M. 1935; R.C.M. 1947, 41-205.

39-2-404. Employee must obey employer. An employee must substantially comply with all the directions of his employer concerning the service on which he is engaged, except where such obedience is impossible or unlawful or would impose new and unreasonable burdens upon the employee.

History: En. Sec. 2676, Civ. C. 1895; re-en. Sec. 5259, Rev. C. 1907; re-en. Sec. 7774, R.C.M. 1921; Cal. Civ. C. Sec. 1981; Based on Field Civ. C. Sec. 1014; re-en. Sec. 7774, R.C.M. 1935; R.C.M. 1947, 41-207.

Cross-References

Termination at will by employer, 39-2-503.

39-2-405. Employee must conform to usage. An employee must perform his service in conformity to the usage of the place of performance unless otherwise directed by his employer or unless it is impracticable or manifestly injurious to his employer to do so.

History: En. Sec. 2677, Civ. C. 1895; re-en. Sec. 5260, Rev. C. 1907; re-en. Sec. 7775, R.C.M. 1921; Cal. Civ. C. Sec. 1982; Field Civ. C. Sec. 1015; re-en. Sec. 7775, R.C.M. 1935; R.C.M. 1947, 41-208.

39-2-406. Degree of skill required. (1) An employee is bound to exercise a reasonable degree of skill unless his employer has notice before employing him of his want of skill.

(2) An employee is always bound to use such skill as he possesses, so far as the same is required, for the service specified.

History: (1)En. Sec. 2678, Civ. C. 1895; re-en. Sec. 5261, Rev. C. 1907; re-en. Sec. 7776, R.C.M. 1921; Cal. Civ. C. Sec. 1983; Field Civ. C. Sec. 1016; re-en. Sec. 7776, R.C.M. 1935; Sec. 41-209, R.C.M. 1947; (2)En. Sec. 2679, Civ. C. 1895; re-en. Sec. 5262, Rev. C. 1907; re-en. Sec. 7777, R.C.M. 1921; Cal. Civ. C. Sec. 1984; Based on Field Civ. C. Sec. 1017; re-en. Sec. 7777, R.C.M. 1935; Sec. 41-210, R.C.M. 1947; R.C.M. 1947, 41-209, 41-210.

39-2-407. Duty to account. An employee must, on demand, render to his employer as often as may be reasonable just accounts of all his transactions in the course of his service and must, without demand, give prompt notice to his employer of everything which he receives for his account.

History: En. Sec. 2681, Civ. C. 1895; re-en. Sec. 5264, Rev. C. 1907; re-en. Sec. 7779, R.C.M. 1921; Cal. Civ. C. Sec. 1986; Field Civ. C. Sec. 1019; re-en. Sec. 7779, R.C.M. 1935; R.C.M. 1947, 41-212.

39-2-408. Duty of employee regarding items received on account of his employer. An employee who receives anything on account of his employer in any capacity other than that of a mere servant is not bound to deliver it to him until demanded and is not at liberty to send it to him from a distance, without demand, in any mode involving greater risk than its retention by the employee himself.

History: En. Sec. 2682, Civ. C. 1895; re-en. Sec. 5265, Rev. C. 1907; re-en. Sec. 7780, R.C.M. 1921; Cal. Civ. C. Sec. 1987; Field Civ. C. Sec. 1020; re-en. Sec. 7780, R.C.M. 1935; R.C.M. 1947, 41-213.

Cross-References

Servant defined, 39-2-601.

39-2-409. Preference to be given to employer's business. An employee who has any business to transact on his own account similar to that entrusted to him by his employer must always give the latter the preference.

History: En. Sec. 2683, Civ. C. 1985; re-en. Sec. 5266, Rev. C. 1907; re-en. Sec. 7781, R.C.M. 1921; Cal. Civ. C. Sec. 1988; Based on Field Civ. C. Sec. 1021; re-en. Sec. 7781, R.C.M. 1935; R.C.M. 1947, 41-214.

39-2-410. Responsibility of employee for substitute. An employee who is expressly authorized to employ a substitute is liable to his principal only for want of ordinary care in his selection. The substitute is directly responsible to the principal.

History: En. Sec. 2684, Civ. C. 1895; re-en. Sec. 5267, Rev. C. 1907; re-en. Sec. 7782, R.C.M. 1921; Cal. Civ. C. Sec. 1989; Field Civ. C. Sec. 1022; re-en. Sec. 7782, R.C.M. 1935; R.C.M. 1947, 41-215.

39-2-411. Surviving employee. Where service is to be rendered by two or more persons jointly and one of them dies, the survivor must act alone if the service to be rendered is such as he can rightly perform without the aid of the deceased person, but not otherwise.

History: En. Sec. 2686, Civ. C. 1895; re-en. Sec. 5269, Rev. C. 1907; re-en. Sec. 7784, R.C.M. 1921; Cal. Civ. C. Sec. 1991; Field Civ. C. Sec. 1024; re-en. Sec. 7784, R.C.M. 1935; R.C.M. 1947, 41-217.

Part 5

Termination of Employment

Part Cross-References

Employment defined, 39-2-101.

Wrongful Discharge From Employment Act, Title 39, ch. 2, part 9.

39-2-501. Termination of employment generally. Every employment is terminated by:

(1) the expiration of its appointed term;
(2) the extinction of its subject;
(3) the death of the employee; or
(4) his legal incapacity to act as such.

History: En. Sec. 2701, Civ. C. 1895; re-en. Sec. 5272, Rev. C. 1907; re-en. Sec. 7787, R.C.M. 1921; Cal. Civ. C. Sec. 1997; Field Civ. C. Sec. 1027; re-en. Sec. 7787, R.C.M. 1935; R.C.M. 1947, 41-302.

Cross-References

Contract not enforceable against employee beyond 2 years, 28-2-722.

39-2-502. Termination by death or incapacity of employer. (1) Every employment in which the power of the employee is not coupled with an interest in its subject is terminated by notice to him of:

(a) the death of the employer; or

(b) his legal incapacity to contract.

(2) An employee, unless the term of his service has expired or unless he has a right to discontinue it at any time without notice, must continue his service after notice of the death or incapacity of his employer, so far as is necessary to protect from serious injury the interests of the employer's successor in interest, until a reasonable time after notice of the facts has been communicated to such successor. The successor must compensate the employee for such service according to the terms of the contract of employment.

History: (1)En. Sec. 2700, Civ. C. 1895; re-en. Sec. 5271, Rev. C. 1907; re-en. Sec. 7786, R.C.M. 1921; Cal. Civ. C. Sec. 1996; Field Civ. C. Sec. 1026; re-en. Sec. 7786, R.C.M. 1935; Sec. 41-301, R.C.M. 1947; (2)En. Sec. 2702, Civ. C. 1895; re-en. Sec. 5273, Rev. C. 1907; re-en. Sec. 7788, R.C.M. 1921; Cal. Civ. C. Sec. 1998; Field Civ. C. Sec. 1028; re-en. Sec. 7788, R.C.M. 1935; Sec. 41-303, R.C.M. 1947; R.C.M. 1947, 41-301, 41-303.

39-2-503. Termination at will. An employment having no specified term may be terminated at the will of either party on notice to the other, except where otherwise provided by this chapter, 28-10-301 through 28-10-303, 28-10-502, 30-11-601 through 30-11-605, and 39-2-302.

History: En. Sec. 2703, Civ. C. 1895; re-en. Sec. 5274, Rev. C. 1907; re-en. Sec. 7789, R.C.M. 1921; Cal. Civ. C. Sec. 1999; Field Civ. C. Sec. 1029; re-en. Sec. 7789, R.C.M. 1935; amd. Sec. 2, Ch. 245, L. 1969; R.C.M. 1947, 41-304; amd. Sec. 4, Ch. 397, L. 1979.

Cross-References

Employee's right to disobey impossible, unlawful, or unreasonable commands, 39-2-404.

39-2-504. Repealed. Sec. 10, Ch. 641, L. 1987.

History: En. Sec. 2704, Civ. C. 1895; re-en. Sec. 5275, Rev. C. 1907; re-en. Sec. 7790, R.C.M. 1921; Cal. Civ. C. Sec. 2000; Field Civ. C. Sec. 1030; re-en. Sec. 7790, R.C.M. 1935; R.C.M. 1947, 41-305.

39-2-505. Repealed. Sec. 10, Ch. 641, L. 1987.

History: En. Sec. 2705, Civ. C. 1895; re-en. Sec. 5276, Rev. C. 1907; re-en. Sec. 7791, R.C.M. 1921; Cal. Civ. C. Sec. 2001; Based on Field Civ. C. Sec. 1031; re-en. Sec. 7791, R.C.M. 1935; R.C.M. 1947, 41-306.

Part 6

Master and Servant

39-2-601. Servant defined. A servant is one who is employed to render personal service to his employer otherwise than in the pursuit of an independent calling and who in such service remains entirely under the control and direction of the latter, who is called his master.

History: **En. Sec. 2720, Civ. C. 1895; re-en. Sec. 5279, Rev. C. 1907; re-en. Sec. 7794, R.C.M. 1921; Cal. Civ. C. Sec. 2009; Field Civ. C. Sec. 1034; re-en. Sec. 7794, R.C.M. 1395; R.C.M. 1947, 41-401.**

39-2-602. Term of hiring. (1) A servant is presumed to have been hired for such length of time as the parties adopt for the estimation of wages. A hiring at a yearly rate is presumed to be for 1 year; a hiring at a daily rate, for 1 day; a hiring by piecework, for no specified term.

(2) In the absence of any agreement or custom as to the term of service, the time of payment, or rate or value of wages, a servant is presumed to be hired by the month at a monthly rate of reasonable wages, to be paid when the service is performed.

History: **(1)En. Sec. 2721, Civ. C. 1895; re-en. Sec. 5280, Rev. C. 1907; re-en. Sec. 7795, R.C.M. 1921; Cal. Civ. C. Sec. 2010; Field Civ. C. Sec. 1035; re-en. Sec. 7795, R.C.M. 1935; Sec. 41-402, R.C.M. 1947; (2)En. Sec. 2722, Civ. C. 1895; re-en. Sec. 5281, Rev. C. 1907; re-en. Sec. 7796, R.C.M. 1921; Cal. Civ. C. Sec. 2011; Based on Field Civ. C. Sec. 1036; re-en. Sec. 7796, R.C.M. 1935; Sec. 41-403, R.C.M. 1947; R.C.M. 1947, 41-402, 41-403.**

Cross-References

Contract not enforceable against employee beyond 2 years, 28-2-722.

Servant defined, 39-2-601.

39-2-603. Renewal of hiring. Where, after the expiration of an agreement respecting the wages and the term of service, the parties continue the relation of master and servant, they are presumed to have renewed the agreement for the same wages and term of service.

History: **En. Sec. 2723, Civ. C. 1895; re-en. Sec. 5282, Rev. C. 1907; re-en. Sec. 7797, R.C.M. 1921; Cal. Civ. C. Sec. 2012; Field Civ. C. Sec. 1037; re-en. Sec. 7797, R.C.M. 1395; R.C.M. 1947, 41-404.**

Cross-References

Servant defined, 39-2-601.

39-2-604. Time of service. The entire time of a domestic servant belongs to the master, and the time of other servants to such extent as is usual in the business in which they serve, not exceeding in any case 10 hours in the day.

History: **En. Sec. 2724, Civ. C. 1895; re-en. Sec. 5283, Rev. C. 1907; re-en. Sec. 7798, R.C.M. 1921; Cal. Civ. C. Sec. 2013; Field Civ. C. Sec. 1038; re-en. Sec. 7798, R.C.M. 1935; R.C.M. 1947, 41-405.**

Cross-References

Eight-hour day maximum, Art. XII, sec. 2, Mont. Const.

39-2-605. Servant to pay over without demand. A servant must deliver to his master without demand, as soon as with reasonable diligence he can find him, everything that he receives for his account, but he is not bound without orders from his master to send anything to him through another person.

History: **En. Sec. 2725, Civ. C. 1895; re-en. Sec. 5284, Rev. C. 1907; re-en. Sec. 7799, R.C.M. 1921; Cal. Civ. C. Sec. 2014; Field Civ. C. Sec. 1039; re-en. Sec. 7799, R.C.M. 1935; R.C.M. 1947, 41-406.**

39-2-606. When servant may be discharged. A master may discharge any servant, other than an apprentice, whether engaged for a fixed term or not:

(1) if he is guilty of misconduct in the course of his service or of gross immorality, though unconnected with the same; or

(2) if, being employed about the person of his master or in a confidential position, the master discovers that he has been guilty of misconduct before or

after the commencement of his service of such a nature that, if the master had known or contemplated it, he would not have so employed him.

History: **En. Sec. 2726, Civ. C. 1895; re-en. Sec. 5285, Rev. C. 1907; re-en. Sec. 7800, R.C.M. 1921; Cal. Civ. C. Sec. 2015; Field Civ. C. Sec. 1040; re-en. Sec. 7800, R.C.M. 1935; R.C.M. 1947, 41-407.**

Cross-References

Apprenticeship, Title 39, ch. 6.

Part 7

General Liability Arising From Employment Relationship

Part Cross-References

Negligence and comparative negligence, 27-1-701, 27-1-702.

General duty of care, 28-1-201.

Indemnity, Title 28, ch. 11, part 3.

39-2-701. Indemnification of employee. (1) An employer must indemnify his employee, except as prescribed in subsection (2) of this section, for all that he necessarily expends or loses in direct consequence of the discharge of his duties as such or of his obedience to the directions of the employer, even though unlawful, unless the employee at the time of obeying such directions believed them to be unlawful.

(2) An employer is not bound to indemnify his employee for losses suffered by the latter in consequence of the ordinary risks of the business in which he is employed.

(3) An employer must in all cases indemnify his employee for losses caused by the former's want of ordinary care.

History: **(1)En. Sec. 2660, Civ. C. 1895; re-en. Sec. 5242, Rev. C. 1907; re-en. Sec. 7757, R.C.M. 1921; Cal. Civ. C. Sec. 1969; Field Civ. C. Sec. 1005; re-en. Sec. 7757, R.C.M. 1935; Sec. 41-102, R.C.M. 1947; (2)En. Sec. 2661, Civ. C. 1895; re-en. Sec. 5243, Rev. C. 1907; re-en. Sec. 7758, R.C.M. 1921; Cal. Civ. C. Sec. 1970; Based on Field Civ. C. Sec. 1006; re-en. Sec. 7758, R.C.M. 1935; Sec. 41-103, R.C.M. 1947; (3)En. Sec. 2662, Civ. C. 1895; re-en. Sec. 5244, Rev. C. 1907; re-en. Sec. 7759, R.C.M. 1921; Cal. Civ. C. Sec. 1971; Field Civ. C. Sec. 1007; re-en. Sec. 7759, R.C.M. 1935; Sec. 41-104, R.C.M. 1947; R.C.M. 1947, 41-102, 41-103, 41-104.**

39-2-702. Liability of employee for negligence. An employee who is guilty of a culpable degree of negligence is liable to his employer for the damage thereby caused to the latter, and the employer is liable to him for the value of such services only as are properly rendered if the service is not gratuitous.

History: **En. Sec. 2685, Civ. C. 1895; re-en. Sec. 5268, Rev. C. 1907; re-en. Sec. 7783, R.C.M. 1921; Cal. Civ. C. Sec. 1990; Field Civ. C. Sec. 1023; re-en. Sec. 7783, R.C.M. 1935; R.C.M. 1947, 41-216.**

Cross-References

Liability for negligent and willful acts, 27-1-701.

39-2-703. Liability of railway corporation for negligence of fellow servants. (1) Every person or corporation operating a railway or railroad in this state is liable for all damages sustained by any employee of such person or corporation in consequence of the neglect of any other employee thereof or by the mismanagement of any other employee thereof and in consequence of the willful wrongs, whether of commission or omission, of any other employee thereof when such neglect, mismanagement, or wrongs are in any manner connected with the use and operation of any railway or railroad on or about which he is employed. No contract which restricts such liability is legal or binding.

(2) In case of the death of any such employee in consequence of any injury or damage so sustained, the right of action provided by subsection (1) shall survive and may be prosecuted and maintained by his heirs or personal representatives.

(3) Every railway corporation doing business in this state, including electric railway corporations, is liable for damages sustained by an employee thereof within this state, subject to the provisions of 27-1-702, when such damages are caused by the negligence of any train dispatcher, telegraph operator, superintendent, master mechanic, yardmaster, conductor, engineer, motorman, or any other employee who has superintendence of any stationary or hand signal.

(4) No contract of insurance, relief, benefit, or indemnity in case of injury or death or any other contract entered into, either before or after the injury, between the person injured and any of the employers named in subsection (3) is a bar or defense to any cause of action brought under the provisions of this section, except as otherwise provided in the Workers' Compensation Act.

History: (1), (2)En. Secs. 1, 2, Ch. 1, L. 1905; re-en. Secs. 5251, 5252, Rev. C. 1907; re-en. Secs. 7766, 7767, R.C.M. 1921; re-en. Secs. 7766, 7767, R.C.M. 1935; Secs. 41-111, 41-112, R.C.M. 1947; (3), (4)En. Secs. 1, 3, Ch. 83, L. 1903; re-en. Secs. 5245, 5247, Rev. C. 1907; re-en. Secs. 7760, 7762, R.C.M. 1921; re-en. Secs. 7760, 7762, R.C.M. 1935; Secs. 41-105, 41-107, R.C.M. 1947; R.C.M 1947, 41-105, 41-107, 41-111, 41-112; amd. Sec. 5, Ch. 397, L. 1979.

Cross-References

Invalidity of contracts that violate law, 28-2-702.

Workers' Compensation Act, Title 39, ch. 71.

Liability for death or injury to railroad employees, 69-14-1006.

39-2-704. Liability of mining company for negligence of fellow servants. (1) Every company, corporation, or individual operating any mine, smelter, or mill for the refining of ores is liable for damages sustained by any employee thereof within this state, subject to the provisions of 27-1-702, when such damage is caused by the negligence of any superintendent, foreman, shift boss, hoisting or other engineer, or craneman.

(2) No contract of insurance, relief, benefit, or indemnity in case of injury or death or any other contract entered into before the injury between the person injured and any of the employers named in this section is a bar or defense to any cause of action brought under the provisions of this section, except as otherwise provided in the Workers' Compensation Act.

(3) In case of the death of any such employee in consequence of any injury or damages so sustained, the right of action survives and may be prosecuted and maintained by his heirs or personal representatives.

History: En. Secs. 1, 2, 3, Ch. 23, L. 1905; re-en. Secs. 5248, 5249, 5250, Rev. C. 1907; re-en. Secs. 7763, 7764, 7765, R.C.M. 1921; re-en. Secs. 7763, 7764, 7765, R.C.M. 1935; R.C.M. 1947, 41-108, 41-109, 41-110; amd. Sec. 6, Ch. 397, L. 1979.

39-2-705. Contract discharging employer liability for negligence void. Any contract or agreement entered into by any person, company, or corporation with its servants or employees whereby such person, company, or corporation shall be released or discharged from liability or responsibility on account of personal injuries received by such servants or employees while in the service of such person, company, or corporation, by reason of the negligence of such person, company, or corporation, or the agents or employees thereof, shall be absolutely null and void.

History: **En. Sec. 2242, Civ. C. 1895; re-en. Sec. 5053, Rev. C. 1907; re-en. Sec. 7555, R.C.M. 1921; re-en. Sec. 7555, R.C.M. 1935; R.C.M. 1947, 13-803.**

Cross-References

Contracts against policy of law, 28-2-702.

Part 8

Blacklisting and Protection of Discharged Employees

Part Cross-References

Employment defined, 39-2-101.

39-2-801. Employee to be furnished on demand with reason for discharge. (1) It is the duty of any person after having discharged any employee from service, upon demand by the discharged employee, to furnish the discharged employee in writing a statement of reasons for the discharge. Except as provided in subsection (3), if the person refuses to do so within a reasonable time after the demand, it is unlawful for the person to furnish any statement of the reasons for the discharge to any person or in any way to blacklist or to prevent the discharged person from procuring employment elsewhere, subject to the penalties and damages prescribed in this part.

(2) A written demand under this part must advise the person who discharged the employee of the possibility that the statements may be used in litigation.

(3) A response to the demand may be modified at any time and may not limit a person's ability to present a full defense in any action brought by the discharged employee. Failure to provide a response as required under subsection (1) may not limit a person's ability to present a full defense in any action brought by the discharged employee.

History: **En. Sec. 3, p. 258, L. 1891; amd. Sec. 3392, Pol. C. 1895; re-en. Sec. 1757, Rev. C. 1907; re-en. Sec. 3094, R.C.M. 1921; re-en. Sec. 3094, R.C.M. 1935; R.C.M. 1947, 41-1311; amd. Sec. 2, Ch. 573, L. 1999.**

Compiler's Comments

1999 Amendment: Chapter 573 in (1) at beginning of second sentence inserted exception clause; inserted (2) requiring that a written demand include notice of potential litigation; inserted (3) regarding response to the demand; and made minor changes in style. Amendment effective May 5, 1999.

Effective Date — Applicability: Section 4, Ch. 573, L. 1999, provided: "[This act] is effective on passage and approval [approved May 5, 1999] and applies to employment-related information disclosed on or after [the effective date of this act]."

39-2-802. Protection of discharged employees. If any person, after having discharged an employee from his service, prevents or attempts to prevent by word or writing of any kind such discharged employee from obtaining employment with any other person, such person is punishable as provided in 39-2-804 and is liable in punitive damages to such discharged person, to be recovered by civil action. No person is prohibited from informing by word or writing any person to whom such discharged person or employee has applied for employment a truthful statement of the reason for such discharge.

History: En. Sec. 1, p. 257, L. 1891; amd. Sec. 3390, Pol. C. 1895; re-en. Sec. 1755, Rev. C. 1907; re-en. Sec. 3092, R.C.M. 1921; re-en. Sec. 3092, R.C.M. 1935; R.C.M. 1947, 41-1309.

39-2-803. Blacklisting prohibited. If any company or corporation in this state authorizes or allows any of its agents to blacklist or any person does blacklist any discharged employee or attempts by word or writing or any other means whatever to prevent any discharged employee or any employee who may have voluntarily left the company's service from obtaining employment with another person, except as provided for in 39-2-802, such company or corporation or person is liable in punitive damages to such employee so prevented from obtaining employment, to be recovered by him in a civil action, and is also punishable as provided in 39-2-804.

History: En. Sec. 2, p. 258, L. 1891; amd. Sec. 3391, Pol. C. 1895; re-en. Sec. 1756, Rev. C. 1907; re-en. Sec. 3093, R.C.M. 1921; re-en. Sec. 3093, R.C.M. 1935; R.C.M. 1947, 41-1310; amd. Sec. 7, Ch. 397, L. 1979.

Cross-References

Punitive damages, 27-1-220, 27-1-221.

39-2-804. Violation of part a misdemeanor. Every person who violates any of the provisions of this part relating to the protection of discharged employees and the prevention of blacklisting is guilty of a misdemeanor.

History: En. Sec. 656, Pen. C. 1895; re-en. Sec. 8467, Rev. C. 1907; re-en. Sec. 11219, R.C.M. 1921; re-en. Sec. 11219, R.C.M. 1935; Sec. 94-3555, R.C.M. 1947; redes. 41-1325 by Sec. 29, Ch. 513, L. 1973; R.C.M. 1947, 41-1325.

Cross-References

Classification of offenses, 45-1-201.
Misdemeanor defined, 45-2-101.
Penalty for misdemeanor, 46-18-212.

Part 9

Wrongful Discharge From Employment

39-2-901. Short title. This part may be cited as the "Wrongful Discharge From Employment Act".

History: En. Sec. 1, Ch. 641, L. 1987.

39-2-902. Purpose. This part sets forth certain rights and remedies with respect to wrongful discharge. Except as limited in this part, employment having no specified term may be terminated at the will of either the employer or the employee on notice to the other for any reason considered sufficient by the terminating party. Except as provided in 39-2-912, this part provides the exclusive remedy for a wrongful discharge from employment.

History: En. Sec. 2, Ch. 641, L. 1987.

39-2-903. Definitions. In this part, the following definitions apply:

(1) "Constructive discharge" means the voluntary termination of employment by an employee because of a situation created by an act or omission of the employer which an objective, reasonable person would find so intolerable that voluntary termination is the only reasonable alternative. Constructive discharge does not mean voluntary termination because of an employer's

refusal to promote the employee or improve wages, responsibilities, or other terms and conditions of employment.

(2) "Discharge" includes a constructive discharge as defined in subsection (1) and any other termination of employment, including resignation, elimination of the job, layoff for lack of work, failure to recall or rehire, and any other cutback in the number of employees for a legitimate business reason.

(3) "Employee" means a person who works for another for hire. The term does not include a person who is an independent contractor.

(4) "Fringe benefits" means the value of any employer-paid vacation leave, sick leave, medical insurance plan, disability insurance plan, life insurance plan, and pension benefit plan in force on the date of the termination.

(5) "Good cause" means reasonable job-related grounds for dismissal based on a failure to satisfactorily perform job duties, disruption of the employer's operation, or other legitimate business reason. The legal use of a lawful product by an individual off the employer's premises during nonworking hours is not a legitimate business reason, unless the employer acts within the provisions of 39-2-313(3) or (4).

(6) "Lost wages" means the gross amount of wages that would have been reported to the internal revenue service as gross income on Form W-2 and includes additional compensation deferred at the option of the employee.

(7) "Public policy" means a policy in effect at the time of the discharge concerning the public health, safety, or welfare established by constitutional provision, statute, or administrative rule.

History: En. Sec. 3, Ch. 641, L. 1987; amd. Sec. 3, Ch. 193, L. 1993.

39-2-904. Elements of wrongful discharge. A discharge is wrongful only if:

(1) it was in retaliation for the employee's refusal to violate public policy or for reporting a violation of public policy;

(2) the discharge was not for good cause and the employee had completed the employer's probationary period of employment; or

(3) the employer violated the express provisions of its own written personnel policy.

History: En. Sec. 4, Ch. 641, L. 1987.

39-2-905. Remedies. (1) If an employer has committed a wrongful discharge, the employee may be awarded lost wages and fringe benefits for a period not to exceed 4 years from the date of discharge, together with interest thereon. Interim earnings, including amounts the employee could have earned with reasonable diligence, must be deducted from the amount awarded for lost wages. Before interim earnings are deducted from lost wages, there must be deducted from the interim earnings any reasonable amounts expended by the employee in searching for, obtaining, or relocating to new employment.

(2) The employee may recover punitive damages otherwise allowed by law if it is established by clear and convincing evidence that the employer engaged in actual fraud or actual malice in the discharge of the employee in violation of 39-2-904(1).

(3) There is no right under any legal theory to damages for wrongful discharge under this part for pain and suffering, emotional distress,

compensatory damages, punitive damages, or any other form of damages, except as provided for in subsections (1) and (2).

History: En. Sec. 5, Ch. 641, L. 1987; amd. Sec. 1, Ch. 442, L. 1993.

39-2-906 through 39-2-910 reserved.

39-2-911. Limitation of actions. (1) An action under this part must be filed within 1 year after the date of discharge.

(2) If an employer maintains written internal procedures, other than those specified in 39-2-912, under which an employee may appeal a discharge within the organizational structure of the employer, the employee shall first exhaust those procedures prior to filing an action under this part. The employee's failure to initiate or exhaust available internal procedures is a defense to an action brought under this part. If the employer's internal procedures are not completed within 90 days from the date the employee initiates the internal procedures, the employee may file an action under this part and for purposes of this subsection the employer's internal procedures are considered exhausted. The limitation period in subsection (1) is tolled until the procedures are exhausted. In no case may the provisions of the employer's internal procedures extend the limitation period in subsection (1) more than 120 days.

(3) If the employer maintains written internal procedures under which an employee may appeal a discharge within the organizational structure of the employer, the employer shall within 7 days of the date of the discharge notify the discharged employee of the existence of such procedures and shall supply the discharged employee with a copy of them. If the employer fails to comply with this subsection, the discharged employee need not comply with subsection (2).

History: En. Sec. 6, Ch. 641, L. 1987.

39-2-912. Exemptions. This part does not apply to a discharge:

(1) that is subject to any other state or federal statute that provides a procedure or remedy for contesting the dispute. The statutes include those that prohibit discharge for filing complaints, charges, or claims with administrative bodies or that prohibit unlawful discrimination based on race, national origin, sex, age, disability, creed, religion, political belief, color, marital status, and other similar grounds.

(2) of an employee covered by a written collective bargaining agreement or a written contract of employment for a specific term.

History: En. Sec. 7, Ch. 641, L. 1987; amd. Sec. 30, Ch. 472, L. 1997.

39-2-913. Preemption of common-law remedies. Except as provided in this part, no claim for discharge may arise from tort or express or implied contract.

History: En. Sec. 8, Ch. 641, L. 1987.

39-2-914. Arbitration. (1) A party may make a written offer to arbitrate a dispute that otherwise could be adjudicated under this part.

(2) An offer to arbitrate must be in writing and contain the following provisions:

(a) A neutral arbitrator must be selected by mutual agreement or, in the absence of agreement, as provided in 27-5-211.

(b) The arbitration must be governed by the Uniform Arbitration Act, Title 27, chapter 5. If there is a conflict between the Uniform Arbitration Act and this part, this part applies.

(c) The arbitrator is bound by this part.

(3) If a complaint is filed under this part, the offer to arbitrate must be made within 60 days after service of the complaint and must be accepted in writing within 30 days after the date the offer is made.

(4) A discharged employee who makes a valid offer to arbitrate that is accepted by the employer and who prevails in such arbitration is entitled to have the arbitrator's fee and all costs of arbitration paid by the employer.

(5) If a valid offer to arbitrate is made and accepted, arbitration is the exclusive remedy for the wrongful discharge dispute and there is no right to bring or continue a lawsuit under this part. The arbitrator's award is final and binding, subject to review of the arbitrator's decision under the provisions of the Uniform Arbitration Act.

History: En. Sec. 9, Ch. 641, L. 1987; amd. Sec. 2, Ch. 442, L. 1993.

39-2-915. Effect of rejection of offer to arbitrate. A party who makes a valid offer to arbitrate that is not accepted by the other party and who prevails in an action under this part is entitled as an element of costs to reasonable attorney fees incurred subsequent to the date of the offer.

History: En. Sec. 3, Ch. 442, L. 1993.

Part 10

Closure of or Layoff at Governmental Facility

Part Cross-References

State Employee Protection Act, Title 2, ch. 18, part 12.

39-2-1001. Purpose. The purpose of this part is to require the state of Montana to provide adequate notification when it plans the closure or retrenchment of a facility in a local area.

History: En. Sec. 1, Ch. 757, L. 1991.

39-2-1002. Definitions. As used in this part, the following definitions apply:

(1) "Closure" means the permanent shutting down of operations at a workplace.

(2) "Department" means the department of labor and industry.

(3) "Employer" means the state of Montana.

(4) "Governmental facility" means any institution, department, agency, bureau, or office operated by the state of Montana and employing more than 25 persons.

(5) "Retrenchment" means reducing the number of employees at the governmental facility by at least 250 employees over any 2-year period, provided that a reduction in the number of employees by attrition is not retrenchment.

History: En. Sec. 2, Ch. 757, L. 1991.

39-2-1003. Requirements for closure or retrenchment. Upon making a decision to close or retrench, an employer shall:

(1) immediately notify the employees, the affected employee organizations, the affected local governments, and a newspaper of general circulation in the county where the governmental facility subject to closure or retrenchment is located; and

(2) within 90 days, provide the employees, the affected employee organizations, and the affected local governments with a written impact statement that includes information concerning:

(a) the number of employees affected;
(b) the amount of the affected employees' payroll;
(c) the potential tax losses to local governments and school districts;
(d) the effect on other businesses; and
(e) the reasons for the closure or retrenchment.

History: En. Sec. 3, Ch. 757, L. 1991.

39-2-1004. Adoption of rules. The department shall adopt rules to provide procedures for an employer to meet the obligations under 39-2-1003.

History: En. Sec. 4, Ch. 757, L. 1991.

CHAPTER 3

WAGES AND WAGE PROTECTION

Part 1 — General Provisions

39-3-101. Employer to furnish itemized statement of deductions.
39-3-102. Compensation of employee dismissed for cause.
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39-3-501. Certain laws extended to certain employers in mineral and oil industry.
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39-3-509. Hearing on complaint — court order to pay wages due or appear and show cause why bond should not be required.
39-3-510. Show cause hearing — restraining order until bond furnished.
39-3-511. Bond requirements.
39-3-512. Enjoining further operations in event bond not filed.
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39-3-514. Punishment of employer for contempt.
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39-3-516. Review of court order by supreme court.
39-3-517. Suit on bond.
39-3-518. Attorney's fee for suit on bond.
39-3-519. Clarification as to construction and applicability of part.
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Part 6 — Restaurant, Bar, and Tavern Wage Protection Act
(Repealed. Sec. 11, Ch. 90, L. 1995)

Part 7 — Contractors' Bonds for Wages and Benefits
(Repealed)

39-3-701. Repealed.
39-3-702. Repealed.
39-3-703. Repealed.
39-3-704. Repealed.
39-3-705. Repealed.
39-3-706. Repealed.

Part 1
General Provisions

39-3-101. Employer to furnish itemized statement of deductions. (1) All employers in this state when making payment to employees for salaries or wages shall, upon making such payment, give to the employee an itemized statement setting forth moneys deducted because of state and federal income taxes, social security, or any other deductions together with the amount of each deduction.

(2) Where no deduction is made in such payment of wages or salaries, the employer shall give to the employee a statement that the payment does not include any such deductions.

History: En. Sec. 1, Ch. 159, L. 1957; R.C.M. 1947, 41-117.

Cross-References

Child support income deductions and withholding, Title 40, ch. 5, parts 3 and 4.

39-3-102. Compensation of employee dismissed for cause. An employee dismissed by his employer for good cause is not entitled to any compensation for services rendered since the last day upon which a payment became due to him under the contract.

History: En. Sec. 2706, Civ. C. 1895; re-en. Sec. 5277, Rev. C. 1907; re-en. Sec. 7792, R.C.M. 1921; Cal. Civ. C. Sec. 2002; Field Civ. C. Sec. 1032; re-en. Sec. 7792, R.C.M. 1935; R.C.M. 1947, 41-307.

Cross-References

Termination at will by employer, 39-2-503.

39-3-103. Compensation of employee leaving for cause. An employee who quits the service of his employer for good cause is entitled to such proportion of the compensation which would become due in case of full performance as the services which he has already rendered bear to the services which he was to render as full performance.

History: En. Sec. 2707, Civ. C. 1895; re-en. Sec. 5278, Rev. C. 1907; re-en. Sec. 7793, R.C.M. 1921; Cal. Civ. C. Sec. 2003; Field Civ. C. Sec. 1033; re-en. Sec. 7793, R.C.M. 1935; R.C.M. 1947, 41-308.

Cross-References

Termination at will by employee, 39-2-503.

39-3-104. Equal pay for women for equivalent service. (1) It is unlawful for the state or any county, municipal entity, school district, public or private corporation, person, or firm to employ women in any occupation within the state for compensation less than that paid to men for equivalent service or for the same amount or class of work or labor in the same industry, school, establishment, office, or place of employment of any kind or description.

(2) If the state or any county, municipal entity, school district, public or private corporation, person, or firm violates any of the provisions of subsection (1), it is guilty of a misdemeanor and upon conviction thereof shall be fined not less than $25 or more than $500 for each offense.

History: En. Secs. 1, 2, Ch. 147, L. 1919; re-en. Secs. 3090, 3091, R.C.M. 1921; re-en. Secs. 3090, 3091, R.C.M. 1935; R.C.M. 1947, 41-1307, 41-1308; amd. Sec. 8, Ch. 397, L. 1979.

Cross-References

Individual dignity, Art. II, sec. 4, Mont. Const.

Equal pay for comparable worth jobs, 2-18-208, 2-18-209.

Women in employment, Title 39, ch. 7.

Illegal discrimination, Title 49, ch. 2.

Part 2
Payment of Wages

Part Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

Commissioner of Labor defined, 39-3-201.

Employee defined, 39-3-201.

Employer defined, 39-3-201.

Wages defined, 39-3-201.

39-3-201. Definitions. The following are the definitions used for the purpose of this part:

(1) "Commissioner of labor" refers to the director, commissioner, or chief of the department of labor and industry, as the department is defined by law, or any person or persons designated by the director, commissioner, or chief for the purpose of this part.

(2) "Department" means the department of labor and industry as provided for in 2-15-1701.

(3) "Employ" means to permit or suffer to work.

(4) "Employee" includes any person who works for another for hire.

(5) "Employer" includes any individual, partnership, association, corporation, business trust, legal representative, or organized group of persons acting directly or indirectly in the interest of an employer in relation to an employee but does not include the United States.

(6) (a) "Wages" includes any money due an employee from the employer or employers, whether to be paid by the hour, day, week, semimonthly, monthly, or yearly, and includes bonus, piecework, and all tips and gratuities that are covered by section 3402(k) and service charges that are covered by section 3401 of the Internal Revenue Code of 1954, as amended and applicable on January 1, 1983, received by employees for services rendered by them to patrons of premises or businesses licensed to provide food, beverage, or lodging.

(b) For the purposes of this subsection (6), "service charge" means an arbitrary fixed charge added to the customer's bill by an employer in lieu of a tip. It is collected by the employer and must be distributed directly to the nonmanagement employee preparing or serving the food or beverage or to any other employee involved in related services, pursuant to a tip pool agreement.

History: En. Sec. 1, Ch. 11, L. 1919; re-en. Sec. 3084, R.C.M. 1921; re-en. Sec. 3084, R.C.M. 1935; amd. Sec. 1, Ch. 169, L. 1941; amd. Sec. 1, Ch. 64, L. 1975; R.C.M. 1947, 41-1301(3); amd. Sec. 1, Ch. 554, L. 1989; amd. Sec. 1, Ch. 479, L. 1995; amd. Sec. 2, Ch. 442, L. 1999.

Compiler's Comments

1999 Amendment: Chapter 442 deleted definition of board that read: ""Board" means the board of personnel appeals provided for in 2-15-1705"; and made minor changes in style. Amendment effective April 23, 1999.

39-3-202. Rulemaking power of commissioner. The commissioner is authorized to issue, amend, and enforce rules for the purpose of carrying out the provisions of this part.

History: En. Sec. 4, Ch. 40, L. 1967; R.C.M. 1947, 41-1314.2(part); amd. Sec. 9, Ch. 397, L. 1979.

39-3-203. Employer to notify employee on written demand as to rate of wages and date of paydays. (1) Each employer or an authorized representative of the employer shall, on written demand, prior to the commencing of work, notify each employee as to the rate of wages to be paid, whether by the hour, day, week, month, or year, and date of paydays. Such notification must be in writing to each employee or by posting of notice in a conspicuous place.

(2) The provisions of this section do not apply to an employer who has entered into a signed collective bargaining agreement, when such agreement contains conditions of employment, wages to be received, and hours to be

worked, or to employers engaged in agriculture or stockraising; provided, however, such employers shall comply with the provisions of 39-3-205.

History: En. Sec. 1, Ch. 11, L. 1919; re-en. Sec. 3084, R.C.M. 1921; re-en. Sec. 3084, R.C.M. 1935; amd. Sec. 1, Ch. 169, L. 1941; amd. Sec. 1, Ch. 64, L. 1975; R.C.M. 1947, 41-1301(1); amd. Sec. 10, Ch. 397, L. 1979.

39-3-204. Payment of wages generally. (1) Except as provided in subsection (4), every employer of labor in the state of Montana shall pay to each employee the wages earned by the employee in lawful money of the United States or checks on banks convertible into cash on demand at the full face value of the checks, and no person for whom labor has been performed may withhold from any employee any wages earned or unpaid for a longer period than 10 business days after the wages are due and payable. However, reasonable deductions may be made for board, room, and other incidentals supplied by the employer, whenever the deductions are a part of the conditions of employment, or other deductions provided for by law.

(2) If at the time of payment of wages any employee is absent from the regular place of labor, the employee is entitled to payment at any time thereafter.

(3) Provisions of this section do not apply to any professional, supervisory, or technical employee who by custom receives wages earned at least once monthly.

(4) Wages may be paid to the employee by electronic funds transfer or similar means of direct deposit if the employee has consented in writing or electronically, if a record is retained, to be paid in this manner. However, an employee may not be required to use electronic funds transfer or similar means of direct deposit as a method for payment of wages.

History: En. Sec. 1, Ch. 11, L. 1919; re-en. Sec. 3084, R.C.M. 1921; re-en. Sec. 3084, R.C.M 1935; amd. Sec. 1, Ch. 169, L. 1941; amd. Sec. 1, Ch. 64, L. 1975; R.C.M. 1947, 41-1301(2); amd. Sec. 11, Ch. 397, L. 1979; amd. Sec. 1, Ch. 134, L. 1993.

Cross-References

Wages of minors, 40-6-236.

39-3-205. Payment of wages when employee separated from employment prior to payday — exceptions. (1) When an employee separates from the employ of any employer, all the unpaid wages of the employee are due and payable on the next regular payday for the pay period during which the employee was separated from employment or 15 days from the date of separation from employment, whichever occurs first, either through the regular pay channels or by mail if requested by the employee.

(2) Except as provided in subsection (3), when an employee is separated for cause or laid off from employment by the employer, all the unpaid wages of the employee are due and payable immediately upon separation unless the employer has a written personnel policy governing the employment that extends the time for payment of final wages to the employee's next regular payday for the pay period or to within 15 days from the separation, whichever occurs first.

(3) When an employee is discharged by reason of an allegation of theft of property or funds connected to the employee's work, the employer may withhold from the employee's final paycheck an amount sufficient to cover the value of the theft if:

(a) the employee agrees in writing to the withholding; or

(b) the employer files a report of the theft with the local law enforcement agency within 7 days of the separation from employment, subject to the following conditions:

(i) if no charges are filed in a court of competent jurisdiction against the employee for the alleged theft within 15 days of the filing of the report with a local law enforcement agency, wages are due and payable upon the expiration of the 15-day period.

(ii) if charges are filed against the employee for theft, the court may order the withheld wages to be offset by the value of the theft. If the employee is found not guilty or if the employer withholds an amount in excess of the value of the theft, the court may order the employer to pay the employee the withheld amount plus interest.

History: En. Sec. 3, Ch. 11, L. 1919; amd. Sec. 1, Ch. 66, L. 1921; re-en. Sec. 3086, R.C.M. 1921; re-en. Sec. 3086, R.C.M. 1935; amd. Sec. 3, Ch. 169, L. 1941; amd. Sec. 2, Ch. 40, L. 1967; R.C.M. 1947, 41-1303; amd. Sec. 1, Ch. 492, L. 1979; amd. Sec. 1, Ch. 583, L. 1989; amd. Sec. 1, Ch. 209, L. 1997.

39-3-206. Penalty for failure to pay wages at times specified in law. (1) An employer who fails to pay an employee as provided in this part or who violates any other provision of this part is guilty of a misdemeanor. A penalty must also be assessed against and paid by the employer to the employee in an amount not to exceed 110% of the wages due and unpaid.

(2) Nothing in this section may be construed to relieve an employer from the requirement to pay an employee the full amount of wages due if the employer is found in violation of this part.

History: En. Sec. 2, Ch. 11, L. 1919; re-en. Sec. 3085, R.C.M. 1921; re-en. Sec. 3085, R.C.M. 1935; amd. Sec. 2, Ch. 169, L. 1941; amd. Sec. 1, Ch. 40, L. 1967; R.C.M. 1947, 41-1302(part); amd. Sec. 1, Ch. 490, L. 1991; amd. Sec. 2, Ch. 134, L. 1993.

39-3-207. Period within which employee may recover wages and penalties. (1) An employee may recover all wages and penalties provided for the violation of 39-3-206 by filing a complaint within 180 days of default or delay in the payment of wages.

(2) Except as provided in subsection (3), an employee may recover wages and penalties for a period of 2 years prior to the date on which the claim is filed if the employee is still employed by the employer or for a period of 2 years prior to the date of the employee's last date of employment.

(3) If an employer has engaged in repeated violations, an employee may recover wages and penalties for a period of 3 years from the date on which a claim is filed if the employee is still employed by the employer or for a period of 3 years prior to the date of the employee's last date of employment.

History: En. Sec. 4, Ch. 11, L. 1919; re-en. Sec. 3087, R.C.M. 1921; re-en. Sec. 3087, R.C.M. 1935; amd. Sec. 1, Ch. 234, L. 1973; R.C.M. 1947, 41-1304; amd. Sec. 3, Ch. 442, L. 1999.

Compiler's Comments

1999 Amendment: Chapter 442 in (1) inserted reference to wages and at end after "39-3-206" substituted "by filing a complaint within 180 days of default or delay in the payment of wages" for "which have accrued to him at any time within 18 months succeeding such default or delay in the payment of such wages"; inserted (2) establishing 2-year time period; inserted (3) establishing 3-year time period; and made minor changes in style. Amendment effective April 23, 1999.

Applicability: Section 30, Ch. 442, L. 1999, provided that this section applies to claims accruing on or after April 23, 1999.

39-3-208. Contracts in violation of part void. Any contract or agreement made between an employer and an employee the provisions of which violate, evade, or circumvent this part is unlawful and void, but the employee may sue to recover the wages earned, together with the penalty specified in 39-3-206 or separately to recover the penalty if the wages have been paid.

History: En. Sec. 5, Ch. 11, L. 1919; re-en. Sec. 3088, R.C.M. 1921; re-en. Sec. 3088, R.C.M. 1935; R.C.M. 1947, 41-1305; amd. Sec. 12, Ch. 397, L. 1979; amd. Sec. 2, Ch. 490, L. 1991; amd. Sec. 3, Ch. 134, L. 1993.

Cross-References

Invalidity of contracts to violate law, 28-2-702.

39-3-209. Commissioner of labor to investigate violations and institute actions for unpaid wages. It shall be the duty of the commissioner of labor to inquire diligently for any violations of this part and to institute actions for the collection of unpaid wages and for the penalties provided for herein in such cases as he may deem proper and to enforce generally the provisions of this part.

History: En. Sec. 2, Ch. 11, L. 1919; re-en. Sec. 3085, R.C.M. 1921; re-en. Sec. 3085, R.C.M. 1935; amd. Sec. 2, Ch. 169, L. 1941; amd. Sec. 1, Ch. 40, L. 1967; R.C.M. 1947, 41-1302(part).

39-3-210. Investigative powers of commissioner. (1) The commissioner or his authorized representatives are empowered to enter and inspect such places, question such employees, and investigate such facts, conditions, or matters which they may consider appropriate to determine whether any person has violated any provision of this part or any rule issued hereunder or which may aid in the enforcement of the provisions of this part.

(2) The commissioner or his authorized representatives may administer oaths and examine witnesses under oath; issue subpoenas; compel the attendance of witnesses and the production of papers, books, accounts, records, payrolls, documents, and testimony; and take depositions and affidavits in any proceeding before the commissioner.

History: En. Sec. 3, Ch. 40, L. 1967; R.C.M. 1947, 41-1314.1; amd. Sec. 13, Ch. 397, L. 1979.

39-3-211. Commissioner to take wage assignments. Whenever the commissioner determines that one or more employees have claims for unpaid wages, he shall, upon the written request of the employee, take an assignment of the claim in trust for such employee and may maintain any proceeding appropriate to enforce the claim, including liquidated damages pursuant to this part. With the written consent of the assignor, the commissioner may settle or adjust any claim assigned pursuant to this section.

History: En. Sec. 4, Ch. 40, L. 1967; R.C.M. 1947, 41-1314.2(part); amd. Sec. 14, Ch. 397, L. 1979.

Cross-References

Wagebrokers, Title 31, ch. 1, part 3.

39-3-212. Court enforcement of administrative decision. (1) A department default order or a decision of the hearings officer, if judicial review is not sought, may be enforced by application by the commissioner to a district court for an order or judgment enforcing the decision. The commissioner shall apply to the district court where the employer has its principal place of business or in the first judicial district of the state. A proceeding under this section is not a review of the validity of the administrative decision.

(2) If judicial review is sought, the district court may issue an order or a judgment enforcing the decision of the department or the hearings officer in a wage claim proceeding. In a case involving failure to pay the standard prevailing rate of wages provided for in Title 18, chapter 2, part 4, the district court may issue an order or a judgment enforcing the decision of the hearings officer.

History: En. 41-1314.4 by Sec. 1, Ch. 197, L. 1974; R.C.M. 1947, 41-1314.4; amd. Sec. 4, Ch. 554, L. 1989; amd. Sec. 3, Ch. 490, L. 1991; amd. Sec. 5, Ch. 90, L. 1995; amd. Sec. 4, Ch. 442, L. 1999.

Compiler's Comments

1999 Amendment: Chapter 442 in first sentence of (1) after "officer" deleted "if the decision is not appealed to the board, or a decision of the board"; in (2) after "decision of the" substituted "department or the hearings officer" for "board"; and made minor changes in style. Amendment effective April 23, 1999.

39-3-213. Disposition of wages. (1) The commissioner of labor shall deposit wages collected under parts 2 and 4 of this chapter into the expendable trust fund and shall attempt to make payment of wages to the entitled person. Wages deposited into the expendable trust fund do not bear interest. The payment of wages collected may be made by means of state warrants.

(2) Warrants issued pursuant to subsection (1) that remain unclaimed for more than 1 year from the date of issuance must be returned to the state treasurer for cancellation in accordance with 17-8-303.

History: En. 41-1314.3 by Sec. 1, Ch. 164, L. 1974; R.C.M. 1947, 41-1314.3; amd. Sec. 1, Ch. 53, L. 1979; amd. Sec. 2, Ch. 5, L. 1995; amd. Sec. 28, Ch. 325, L. 1995.

39-3-214. Court costs and attorneys' fees. (1) Whenever it is necessary for the employee to enter or maintain a suit at law for the recovery or collection of wages due as provided for by this part, a resulting judgment must include a reasonable attorney's fee in favor of the successful party, to be taxed as part of the costs in the case.

(2) Any judgment for the plaintiff in a proceeding pursuant to this part must include all costs reasonably incurred in connection with the proceeding, including attorneys' fees.

(3) If the proceeding is maintained by the commissioner, no court costs or fees are required of him nor is he required to furnish any bond or other security that might otherwise be required in connection with any phase of the proceeding.

History: (1)En. Sec. 6, Ch. 11, L. 1919; re-en. Sec. 3089, R.C.M. 1921; re-en. Sec. 3089, R.C.M. 1935; Sec. 41-1306, R.C.M. 1947; (2), (3)En. Sec. 4, Ch. 40, L. 1967; Sec. 41-1314.2, R.C.M. 1947; R.C.M. 1947, 41-1306, 41-1314.2(part); amd. Sec. 15, Ch. 397, L. 1979.

Cross-References

Governmental entity not required to prepay fees, 25-10-405.

Payment of costs by governmental entities, Title 25, ch. 10, part 7.

39-3-215. Authority of county attorney. Nothing herein contained shall be construed to limit the authority of the county attorney of any county of the state to prosecute actions, both civil and criminal, for such violations of this part as may come to his knowledge or to enforce the provisions hereof independently and without specific direction of the commissioner of labor.

History: En. Sec. 2, Ch. 11, L. 1919; re-en. Sec. 3085, R.C.M. 1921; re-en. Sec. 3085, R.C.M. 1935; amd. Sec. 2, Ch. 169, L. 1941; amd. Sec. 1, Ch. 40, L. 1967; R.C.M. 1947, 41-1302(part).

Cross-References

County Attorney — duties generally, Title 7, ch. 4, part 27.

39-3-216. Mediation — hearing. (1) If the department determines that a wage claim is valid and the employer does not appeal the determination, the department may enter a default order against the employer for the amount of wages due and for any penalty assessed pursuant to 39-3-206. The department may enforce the default order pursuant to 39-3-212.

(2) If a party disputes the determination of the department prior to a contested case, the department shall conduct mediation of the dispute in accordance with guidelines to be established by department rule.

(3) When the department determines that a wage claim is valid, the department shall mail the determination to the parties at the last-known address of each party. If a party appeals the department's determination within 15 days after the determination is mailed by the department, a hearing must be conducted according to contested case procedures under Title 2, chapter 4, part 6, except that service need not be made as prescribed for civil actions in the district court and the hearings officer is not bound by statutory or common-law rules of evidence. The hearing may be conducted by telephone or by videoconference. The department shall by rule provide relief for a person who does not receive the determination by mail.

(4) The decision of the hearings officer is final unless an aggrieved party requests a rehearing or initiates judicial review, pursuant to Title 2, chapter 4, part 7, by filing a petition in district court within 30 days of the date of mailing of the hearings officer's decision.

History: En. Sec. 2, Ch. 554, L. 1989; amd. Sec. 4, Ch. 490, L. 1991; amd. Sec. 4, Ch. 134, L. 1993; amd. Sec. 6, Ch. 90, L. 1995; amd. Sec. 5, Ch. 442, L. 1999.

Compiler's Comments

1999 Amendment: Chapter 442 inserted (2) concerning department mediation of disputed contested case; and in (4) substituted "an aggrieved party requests a rehearing or initiates judicial review, pursuant to Title 2, chapter 4, part 7, by filing a petition in district court within 30 days of the date of mailing of the hearings officer's decision" for "further review is initiated pursuant to 39-3-217 within 15 days after the decision is mailed to each party's last-known address. The period may be extended by the board for good cause." Amendment effective April 23, 1999.

Applicability: Section 30, Ch. 442, L. 1999, provided that this section applies to claims accruing on or after April 23, 1999.

39-3-217. Repealed. Sec. 26, Ch. 442, L. 1999.

History: En. Sec. 3, Ch. 554, L. 1989; amd. Sec. 7, Ch. 90, L. 1995.

Part 3

Reciprocal Agreement for Collection of Wages Act

39-3-301. Short title. This part may be cited as "The Reciprocal Agreement for Collection of Wages Act of 1977".

History: En. 41-1326 by Sec. 1, Ch. 216, L. 1977; R.C.M. 1947, 41-1326.

39-3-302. Purpose. The purpose of this part is to provide for a method of reciprocal enforcement in other states of Montana's wage payment laws contained in part 2 of this chapter and to provide for reciprocal enforcement in Montana of similar wage payment laws of other states.

History: En. 41-1327 by Sec. 2, Ch. 216, L. 1977; R.C.M. 1947, 41-1327.

39-3-303. Reciprocal agreements for collection of wages. The department of labor and industry may enter into reciprocal agreements with the labor department or corresponding agency of another state or with the person, board, officer, or commission authorized to act for and on behalf of the department or agency for the collection in the other state of claims or judgments for wages and other demands based upon claims previously assigned to the department of labor and industry.

History: En. 41-1328 by Sec. 3, Ch. 216, L. 1977; R.C.M. 1947, 41-1328.

39-3-304. Actions in other states for collections of claims — assignments for collection. The department of labor and industry may, to the extent provided by a reciprocal agreement entered into pursuant to 39-3-303 or by the laws of another state, maintain actions in the courts of another state for the collection of claims for wages, judgments, and other demands and may assign the claims, judgments, and demands to the labor department or agency of another state for collection to the extent permitted or provided for by the laws of the other state or by reciprocal agreement.

History: En. 41-1329 by Sec. 4, Ch. 216, L. 1977; R.C.M. 1947, 41-1329.

39-3-305. Claims assigned by other states — actions — collection. The department of labor and industry may, upon the written request of the labor department or other corresponding agency of another state or a person, board, officer, or commission of the other state authorized to act for and on behalf of the labor department or corresponding agency, maintain actions in the courts of this state upon assigned claims for wages, judgments, and demands arising in the other state in the same manner and to the same extent that these actions by the department of labor and industry are authorized when arising in this state. However, these actions may be commenced and maintained only in those cases where the other state, by appropriate legislation or by reciprocal agreement, extends a like comity to similar cases arising in this state.

History: En. 41-1330 by Sec. 5, Ch. 216, L. 1977; R.C.M. 1947, 41-1330.

39-3-306. Limitations. Limitations regarding the amount of wages covered by a reciprocal agreement or the time during which the wages are accrued shall be the limitations imposed by the laws of the state originating the action.

History: En. 41-1331 by Sec. 6, Ch. 216, L. 1977; R.C.M. 1947, 41-1331.

Part 4
Minimum Wage and Overtime Compensation

Part Cross-References

Eight-hour maximum workday, Art. XII, sec. 2, Mont. Const.

Adoption and publication of rules, Title 2, ch. 4, part 3.

Compensation of Deputy Sheriffs and Undersheriffs, 7-4-2507 through 7-4-2509.

Department of Public Safety — work period in lieu of workweek — overtime compensation, 7-32-115.

Standard prevailing wages in public works, Title 18, ch. 2, part 4.

Definitions, 39-3-402.

39-3-401. Declaration of policy. It is declared to be the policy of this part to:

(1) establish minimum wage and overtime compensation standards for workers at levels consistent with their health, efficiency, and general well-being;

(2) safeguard existing minimum wage and overtime compensation standards which are adequate to maintain the health, efficiency, and general well-being of workers against the unfair competition of wage and hour standards which do not provide such adequate standards of living; and

(3) sustain purchasing power and increase employment opportunities.

History: En. Sec. 1, Ch. 417, L. 1971; R.C.M. 1947, 41-2301.

39-3-402. Definitions. As used in this part, the following definitions apply:

(1) "Commissioner" means the commissioner of labor and industry.

(2) "Employ" means to suffer or permit to work.

(3) "Employee" means an individual employed by an employer.

(4) (a) "Farm or ranch" means an endeavor primarily engaged in cultivating the soil or in connection with raising or harvesting an agricultural or horticultural commodity, including the raising, shearing, feeding, caring for, training, and management of livestock, bees, and poultry and fur-bearing animals and wildlife.

(b) As used in this subsection (4), "livestock" includes ostriches, rheas, and emus.

(5) "Farm worker" means a person employed to do a service performed on a farm or ranch.

(6) "Occupation" means an occupation, service, trade, business, industry, or branch or group of industries or employment or class of employment in which employees are gainfully employed.

(7) (a) "Wage" means compensation due to an employee by reason of employment, payable in legal tender of the United States or check on banks convertible into cash on demand at full face value, subject to an allowance as may be permitted by regulations of the commissioner under 39-3-403. The term "wage" includes the reasonable cost to the employer of furnishing the employee with lodging or any other facility if the lodging or other facility is customarily furnished by the employer to employees. However, the inclusion may not exceed an amount equal to 40% of the total wage paid by the employer to the employee.

(b) The term "wage" does not include the cost to the employer of providing meals or a meal allowance to the employee or the value of tips or gratuities that are covered by section 3402(k) or service charges that are covered by section 3401 of the Internal Revenue Code of 1954, as amended and applicable on January 1, 1983, received by employees for services rendered by them to patrons of premises or businesses licensed to provide food, beverage, or lodging.

(c) For the purposes of this subsection (7), "service charge" means an arbitrary fixed charge added to the customer's bill by an employer in lieu of a tip. It is collected by the employer and must be distributed directly to the nonmanagement employee preparing or serving the food or beverage or to any other employee involved in related services, pursuant to a tip pool agreement.

History: En. Sec. 2, Ch. 417, L. 1971; R.C.M. 1947, 41-2302; amd. Sec. 1, Ch. 446, L. 1987; amd. Sec. 1, Ch. 216, L. 1991; amd. Sec. 6, Ch. 206, L. 1995; amd. Sec. 2, Ch. 479, L. 1995.

39-3-403. Rulemaking authority. The commissioner shall adopt and revise administrative rules to carry out the purposes of this part.

History: En. Sec. 5, Ch. 417, L. 1971; R.C.M. 1947, 41-2305; amd. Sec. 8, Ch. 90, L. 1995.

39-3-404. Minimum wage. (1) Except as otherwise provided in this part and except for farm workers as provided in subsection (2), every employer shall pay to each of his employees a wage of not less than the applicable minimum wage as determined by the commissioner in accordance with 39-3-409.

(2) In the case of a farm worker employed for a part of a calendar year which includes periods requiring working hours in excess of 8 hours per day and other seasonal periods requiring working hours substantially less than 8 hours per day, the employer may pay the worker at a fixed rate of compensation during the term of employment. The employer may elect to:

(a) keep a record of the total number of hours worked by the worker during the part of the year during which the worker was employed by him (the total wages paid by such employer to such employee for that part of the year during which said employee was employed by him shall not be less than the applicable minimum wage rate multiplied by the total number of hours so worked); or

(b) in lieu of the minimum wage set forth herein, pay the farm worker a wage as herein defined on a monthly basis. This monthly compensation shall constitute a minimum wage and shall not be less than $635 a month beginning January 1, 1990.

History: En. Sec. 3, Ch. 417, L. 1971; amd. Sec. 1, Ch. 363, L. 1973; amd. Sec. 1, Ch. 421, L. 1975; R.C.M. 1947, 41-2303(a), (c); amd. Sec. 1, Ch. 410, L. 1981; amd. Sec. 1, Ch. 360, L. 1985; amd. Sec. 1, Ch. 674, L. 1989.

39-3-405. Overtime compensation. (1) No employer shall employ any of his employees for a workweek longer than 40 hours unless such employee receives compensation for his employment in excess of 40 hours in a workweek at a rate of not less than 1 ½ times the hourly wage rate at which he is employed.

(2) No overtime provision shall apply for farm workers.

(3) Employers of students at an amusement or recreational area that operates on a seasonal basis who furnish said students with board, lodging, or other facilities shall not employ said students for a workweek longer than 48 hours, unless such students receive compensation for their employment in excess of 48 hours in a workweek at a rate of not less than 1 ½ times the hourly wage rate at which they are employed.

History: En. Sec. 3, Ch. 417, L. 1971; amd. Sec. 1, Ch. 363, L. 1973; amd. Sec. 1, Ch. 421, L. 1975; R.C.M. 1947, 41-2303(b).

39-3-406. Exclusions. (1) The provisions of 39-3-404 and 39-3-405 do not apply with respect to:

(a) students participating in a distributive education program established under the auspices of an accredited educational agency;

(b) persons employed in private homes whose duties consist of menial chores, such as babysitting, mowing lawns, and cleaning sidewalks;

(c) persons employed directly by the head of a household to care for children dependent upon the head of the household;

(d) immediate members of the family of an employer or persons dependent upon an employer for half or more of their support in the customary sense of being a dependent;

(e) persons who are not regular employees of a nonprofit organization and who voluntarily offer their services to a nonprofit organization on a fully or partially reimbursed basis;

(f) persons with disabilities engaged in work that is incidental to training or evaluation programs or whose earning capacity is so severely impaired that they are unable to engage in competitive employment;

(g) apprentices or learners, who may be exempted by the commissioner for a period not to exceed 30 days of their employment;

(h) learners under the age of 18 who are employed as farm workers, provided that the exclusion may not exceed 180 days from their initial date of employment and further provided that during this exclusion period, wages paid the learners may not be less than 50% of the minimum wage rate established in this part;

(i) retired or semiretired persons performing part-time incidental work as a condition of their residence on a farm or ranch;

(j) an individual employed in a bona fide executive, administrative, or professional capacity as these terms are defined by regulations of the commissioner;

(k) an individual employed by the United States of America;

(l) resident managers employed in lodging establishments or personal care facilities who, under the terms of their employment, live in the establishment or facility;

(m) an outside salesperson or marketing representative paid on a commission, contract, or salary basis who is primarily employed in selling or marketing products or services in the food distribution industry for a food broker, wholesaler, or association;

(n) a direct seller as defined in 26 U.S.C. 3508;

(o) a person placed as a participant in a public assistance program authorized by Title 53 into a work setting for the purpose of developing employment skills. The placement may be with either a public or private employer. The exclusion does not apply to an employment relationship formed in the work setting outside the scope of the employment skills activities authorized by Title 53.

(p) a person serving as a foster parent, licensed as a foster care provider in accordance with 41-3-1141, and providing care without wage compensation to no more than six foster children in the provider's own residence. The person may receive reimbursement for providing room and board, obtaining training, respite care, leisure and recreational activities, and providing for other needs and activities arising in the provision of in-home foster care.

(q) an employee employed in domestic service employment to provide live-in companionship services, as defined in 29 CFR 552.6, for individuals who, because of age or infirmity, are unable to care for themselves as provided under section 213(a)(15) of the Fair Labor Standards Act (29 U.S.C. 213).

(2) The provisions of 39-3-405 do not apply to:

(a) an employee with respect to whom the United States secretary of transportation has power to establish qualifications and maximum hours of service pursuant to the provisions of 49 U.S.C. 31502;

(b) an employee of an employer subject to 49 U.S.C. 10501 and 49 U.S.C. 60501, the provisions of part I of the Interstate Commerce Act;

(c) an individual employed as an outside buyer of poultry, eggs, cream, or milk, in their raw or natural state;

(d) an outside salesperson paid on a commission or contract basis who is primarily employed in selling advertising for a newspaper;

(e) a salesperson, parts person, or mechanic paid on a commission or contract basis and primarily engaged in selling or servicing automobiles, trucks, mobile homes, recreational vehicles, farm implements, or replacement parts if the salesperson, parts person, or mechanic is employed by a nonmanufacturing establishment primarily engaged in the business of selling the vehicles, implements, or replacement parts to wholesalers or ultimate purchasers;

(f) a salesperson primarily engaged in selling trailers, boats, or aircraft if the salesperson is employed by a nonmanufacturing establishment primarily engaged in the business of selling trailers, boats, or aircraft to ultimate purchasers;

(g) an outside salesperson paid on a commission or contract basis who is primarily employed in selling office supplies, computers, or other office equipment for an office equipment dealer;

(h) a salesperson paid on a commission or contract basis who is primarily engaged in selling advertising for a radio or television station employer;

(i) an employee employed as a driver or driver's helper making local deliveries who is compensated for the employment on the basis of trip rates or other delivery payment plan if the commissioner finds that the plan has the general purpose and effect of reducing hours worked by the employees to or below the maximum workweek applicable to them under 39-3-405;

(j) an employee employed in agriculture or in connection with the operation or maintenance of ditches, canals, reservoirs, or waterways that are not owned or operated for profit, that are not operated on a sharecrop basis, and that are used exclusively for supply and storing of water for agricultural purposes;

(k) an employee employed in agriculture by a farmer, notwithstanding other employment of the employee in connection with livestock auction operations in which the farmer is engaged as an adjunct to the raising of livestock, either alone or in conjunction with other farmers, if the employee is:

(i) primarily employed during a workweek in agriculture by a farmer; and

(ii) paid for employment in connection with the livestock auction operations at a wage rate not less than that prescribed by 39-3-404;

(l) an employee of an establishment commonly recognized as a country elevator, including an establishment that sells products and services used in the operation of a farm if no more than five employees are employed by the establishment;

(m) a driver employed by an employer engaged in the business of operating taxicabs;

(n) an employee who is employed with the employee's spouse by a nonprofit educational institution to serve as the parents of children who are orphans or one of whose natural parents is deceased or who are enrolled in the institution and reside in residential facilities of the institution so long as the children are in residence at the institution and so long as the employee and the employee's spouse reside in the facilities and receive, without cost, board and lodging from the institution and are together compensated, on a cash basis, at an annual rate of not less than $10,000;

(o) an employee employed in planting or tending trees; cruising, surveying, or felling timber; or transporting logs or other forestry products to a mill, processing plant, railroad, or other transportation terminal if the number of employees employed by the employer in the forestry or lumbering operations does not exceed eight;

(p) an employee of a sheriff's department who is working under an established work period in lieu of a workweek pursuant to 7-4-2509(1);

(q) an employee of a municipal or county government who is working under a work period not exceeding 40 hours in a 7-day period established through a collective bargaining agreement when a collective bargaining unit represents the employee or by mutual agreement of the employer and employee when a bargaining unit is not recognized. Employment in excess of 40 hours in a 7-day, 40-hour work period must be compensated at a rate of not less than 1 ½ times the hourly wage rate for the employee.

(r) an employee of a hospital or other establishment primarily engaged in the care of the sick, disabled, aged, or mentally ill or defective who is working under a work period not exceeding 80 hours in a 14-day period established through either a collective bargaining agreement when a collective bargaining unit represents the employee or by mutual agreement of the employer and employee when a bargaining unit is not recognized. Employment in excess of 8 hours a day or 80 hours in a 14-day period must be compensated for at a rate of not less than 1 ½ times the hourly wage rate for the employee.

(s) a firefighter who is working under a work period established in a collective bargaining agreement entered into between a public employer and a firefighters' organization or its exclusive representative;

(t) an officer or other employee of a police department in a city of the first or second class who is working under a work period established by the chief of police under 7-32-4118;

(u) an employee of a department of public safety working under a work period established pursuant to 7-32-115;

(v) an employee of a retail establishment if the employee's regular rate of pay exceeds 1 1/2 times the minimum hourly rate applicable under section 206 of the Fair Labor Standards Act of 1938 (29 U.S.C. 206) and if more than half of the employee's compensation for a period of not less than 1 month is derived from commissions on goods and services;

(w) a person employed as a guide, cook, camp tender, or livestock handler by a licensed outfitter as defined in 37-47-101;

(x) an employee employed as a radio announcer, news editor, or chief engineer by an employer in a second- or third-class city or a town;

(y) an employee of the consolidated legislative branch as provided in 5-2-503.

History: (1)En. Sec. 4, Ch. 417, L. 1971; amd. Sec. 19, Ch. 94, L. 1973; R.C.M. 1947, 41-2304; (2)En. Sec. 1, Ch. 572, L. 1979; amd. Sec. 6, Ch. 603, L. 1981; amd. Sec. 1, Ch. 375, L. 1983; amd. Sec. 3, Ch. 562, L. 1983; amd. Sec. 1, Ch. 640, L. 1983; amd. Sec. 3, Ch. 256, L. 1985; amd. Sec. 1, Ch. 175, L. 1987; amd. Sec. 1, Ch. 353, L. 1987; amd. Sec. 1, Ch. 650, L. 1987; amd. Sec. 1, Ch. 276, L. 1991; amd. Sec. 1, Ch. 95, L. 1993; amd. Sec. 1, Ch. 405, L. 1993; amd. Sec. 1, Ch. 48, L. 1995; amd. Sec. 1, Ch. 114, L. 1995; amd. Sec. 1, Ch. 382, L. 1995; amd. Sec. 2, Ch. 2, L. 1997; amd. Sec. 160, Ch. 42, L. 1997; amd. Sec. 1, Ch. 193, L. 1997; amd. Sec. 31, Ch. 472, L. 1997; amd. Sec. 1, Ch. 515, L. 1997; amd. Sec. 1, Ch. 179, L. 1999.

Compiler's Comments

1999 Amendment: Chapter 179 inserted (1)(q) excluding persons providing live-in companionship for the aged or infirm. Amendment effective March 25, 1999.

39-3-407. Enforcement. Enforcement of this part shall be treated as a wage claim action and shall be pursued in accordance with part 2 of this chapter, as amended. This part may also be enforced in accordance with part 5 of this chapter for the benefit of certain employees in the mineral and oil industry. The commissioner may enforce this part without the necessity of a wage assignment.

History: En. Sec. 6, Ch. 417, L. 1971; amd. Sec. 2, Ch. 363, L. 1973; R.C.M. 1947, 41-2306; amd. Sec. 1, Ch. 49, L. 1979.

39-3-408. Provisions cumulative. (1) The provisions of this part shall be in addition to other provisions now provided by law for the payment and collection of wages and salaries but shall not apply to employees covered by the Fair Labor Standards Act of 1938 except as provided in subsection (2).

(2) Sections 39-3-402 and 39-3-404 shall apply to an employee covered by the Fair Labor Standards Act of 1938 if state law provides a minimum wage that is higher than the minimum wage established under federal law.

History: En. Sec. 7, Ch. 417, L. 1971; amd. Sec. 3, Ch. 363, L. 1973; R.C.M. 1947, 41-2307; amd. Sec. 2, Ch. 446, L. 1987.

39-3-409. Adoption of minimum wage rates — exception. (1) The commissioner shall adopt rules to establish a minimum wage that, except as provided in subsection (2), must be the same minimum hourly wage rate as provided under the federal Fair Labor Standards Act of 1938 (29 U.S.C. 206(a)(1)), excluding the value of tips received by the employee and the special provisions for a training wage.

(2) The minimum wage rate for a business whose annual gross sales are $110,000 or less is $4 an hour.

History: En. Sec. 2, Ch. 674, L. 1989; amd. Sec. 1, Ch. 650, L. 1991.

39-3-410. Repealed. Sec. 2, Ch. 650, L. 1991.

History: En. Sec. 3, Ch. 674, L. 1989.

Part 5

Wage Protection for Certain Employees of Mineral and Oil Industry

39-3-501. Certain laws extended to certain employers in mineral and oil industry. For the purposes of this part, all the provisions of part 2 of this chapter extend to and govern every person, firm, partnership, or corporation engaged in the business of extracting or of extracting and refining or reducing metals and minerals or mining for coal or drilling for oil, except such persons, firms, partnerships, or corporations as have a free and unencumbered title to not less than one-half the fee of the property being worked. For this purpose, an outstanding unpaid or unredeemed tax sale certificate is not considered an encumbrance.

History: **En. Sec. 1, Ch. 39, L. 1939; R.C.M. 1947, 41-1312; amd. Sec. 16, Ch. 397, L. 1979.**

39-3-502. Operator to file statement — penalty for failure to file. (1) Every person, firm, or partnership coming within the provisions of this part shall, before commencing operations, file with the commissioner of labor and industry and also in the office of the county clerk and recorder of each county where such operations are to be carried on a verified statement showing the names and addresses of each party interested therein or, if a corporation, the names and addresses of its officers and directors, the principal place of business of such corporation, and the names and addresses of the person or persons resident of Montana designated as the person or persons upon whom service of process may be made.

(2) Every person, firm, partnership, or corporation failing to file a statement with the commissioner of labor and industry and in the offices of the county clerk and recorders, as provided in subsection (1), shall be deemed guilty of a misdemeanor and punishable as provided by law.

History: **(1)En. Sec. 2, Ch. 39, L. 1939; Sec. 41-1313, R.C.M. 1947; (2)En. Sec. 3, Ch. 39, L. 1939; Sec. 41-1314, R.C.M. 1947; R.C.M. 1947, 41-1313, 41-1314.**

Cross-References

Misdemeanor penalty when none specified, 46-18-212.

39-3-503. Report of violations to county attorney by commissioner. Whenever it shall appear from reliable information satisfactory to the commissioner of labor and industry that any person, firm, partnership, or corporation engaged in the business mentioned in 39-3-501 and not exempt from the effect of this part shall have failed to pay any wages or salaries due his employees as required by part 2 of this chapter, he shall have the right to deliver such information to the county attorney of the county wherein the operations of the employer are being carried on and to request such county attorney to file a complaint in the district court of said county in accordance with the provisions of this part and part 2 of this chapter.

History: **En. Sec. 4, Ch. 39, L. 1939; R.C.M. 1947, 41-1315(1).**

39-3-504. Report of violations directly to county attorney by employee. Any employee may make complaint directly to the county attorney relative to any violation of this part or part 2 of this chapter.

History: **En. Sec. 4, Ch. 39, L. 1939; R.C.M. 1947, 41-1315(part); amd. Sec. 17, Ch. 397, L. 1979.**

39-3-505. County attorney to notify commissioner of violation reported directly by employee. The county attorney of the county shall promptly notify the commissioner of labor and industry of any complaint made by any employee relative to the violation of any of the provisions of this part or part 2 of this chapter and shall in writing keep the commissioner advised of each step in any proceeding taken by the county attorney thereunder.

History: **En. Sec. 4, Ch. 39, L. 1939; R.C.M. 1947, 41-1315(part); amd. Sec. 18, Ch. 397, L. 1979.**

39-3-506. County attorney to file complaint in district court on belief of violation. If a county attorney believes after receiving information that the provisions of this part or part 2 of this chapter have been violated and that such violation was willful or that the financial condition of the employer is such as to endanger employees in receiving prompt payment or collection of wages, he shall file a complaint in district court. All proceedings upon such complaint must be promptly prosecuted.

History: **En. Sec. 4, Ch. 39, L. 1939; R.C.M. 1947, 41-1315(part); amd. Sec. 19, Ch. 397, L. 1979.**

39-3-507. Prayer for relief. Should such complaint be filed by the county attorney upon his own motion or at said request of said commissioner of labor and industry, the same shall pray that relief be had against the employer for the greater security for the payment of salaries and wages of the employees.

History: **En. Sec. 4, Ch. 39, L. 1939; R.C.M. 1947, 41-1315(part).**

39-3-508. Summons — service of process. (1) Upon the filing of such complaint, summons shall issue thereon and a copy of such complaint and a copy of the summons shall be served upon the employer, who shall have 10 days after such service to appear and defend such action.

(2) All orders and other process provided for in this part shall be served by the sheriff upon the employer in the same manner as a summons in a civil suit is served. Service upon any partner or member of any firm shall be considered service upon each partner and each member of the firm. In the event that the employer is a nonresident or a corporation without officers or directors within the county who cannot conveniently and promptly be found for service, then service upon the manager, superintendent, or foreman in charge of the work or, there being none such, then posting a copy of the order or other process provided to be served herein in a conspicuous place at or near the entrance to the principal workings shall be deemed sufficient service.

History: **(1)En. Sec. 4, Ch. 39, L. 1939; Sec. 41-1315, R.C.M. 1947; (2)En. Sec. 7, Ch. 39, L. 1939; Sec. 41-1318, R.C.M. 1947; R.C.M. 1947, 41-1315(part), 41-1318.**

Cross-References

Definitions and procedure for process and service, 25-3-101; Rule 4, M.R.Civ.P. (see Title 25, ch. 20).

39-3-509. Hearing on complaint — court order to pay wages due or appear and show cause why bond should not be required. Upon the conclusion of the hearing upon such complaint, the judge of the district court may make findings and shall issue an order to the employer in default to pay within 5 days all wages and salaries found by the court to be due and unpaid or an order to appear before the court within 10 days and show cause why a judgment and order should not issue requiring said employer to give bond for the payment of all wages and salaries then due and thereafter to accrue to his employees within said county. Service of such order shall be made at least 5 days before the date set for hearing or the date to which such hearing may be continued by the court upon good cause shown.

History: **En. Sec. 5, Ch. 39, L. 1939; R.C.M. 1947, 41-1316.**

39-3-510. Show cause hearing — restraining order until bond furnished. Upon the hearing of such order, if the court shall determine that the default of said employer in the payment of wages and salaries was willful or that the financial condition of the employer is such as to endanger or delay or impede employees in collecting their wages and salaries or that the employer is a nonresident of the state without visible property in said county subject to execution or who has within 2 years defaulted in payroll payments, the court may adjudge and decree that the employee or employees are endangered in the collection of their just demands and the court may issue a restraining order against the employer forbidding further prosecution of operations by said employer until after the employer has furnished a good and sufficient bond, in form to be approved by the court with good and sufficient surety or sureties who can and do legally justify, and deposit said bond with the clerk of court of said county obligating the employer to pay all wages and salaries as required by part 2 of this chapter.

History: En. Sec. 6, Ch. 39, L. 1939; R.C.M. 1947, 41-1317(part).

Cross-References

Injunctions, Title 27, ch. 19.

39-3-511. Bond requirements. (1) Said bond may be that of a surety company licensed and authorized to do business within the state or of two owners of real estate situate in said county and who can and do justify as sureties in the same manner as sureties justify on appeal bonds or bail bonds.

(2) Said bond shall be in the sum of not less than $500 for each unit of five men or less employed by such person, firm, partnership, or corporation.

(3) Said bond shall continue in force for 1 year.

(4) Said bond shall run in the name of the state of Montana and shall be examined and approved by the judge of the district court, said approval to be endorsed thereon.

History: En. Sec. 6, Ch. 39, L. 1939; R.C.M. 1947, 41-1317(part).

Cross-References

Undertakings for security, Title 25, ch. 1, part 4.

39-3-512. Enjoining further operations in event bond not filed. (1) In the event that the bond ordered by the district court is not executed and filed with the county treasurer within the time fixed by the court, the court may, if it deems the persons working for such employer to be insecure in the prompt payment or collection of their wages or salaries, enjoin any and all further operations of said employer within the state for a period of 1 year at any mine or reduction works or oil well or until the order, judgment, or decree of the court shall have been fully complied with.

(2) The county attorney of the county wherein such proceedings are had or the attorney general of the state shall, at his or their discretion, file such action and prosecute the same.

History: En. Sec. 8, Ch. 39, L. 1939; R.C.M. 1947, 41-1319(part).

Cross-References

Injunctions, Title 27, ch. 19.

39-3-513. Costs of proceeding. The said district court shall include in any order, judgment, or decree against the employer all costs of the proceeding, which shall be taxed against the employer and paid into the clerk of the court to be by him deposited with the county treasurer to the credit of the general fund of the county.

History: En. Sec. 8, Ch. 39, L. 1939; R.C.M. 1947, 41-1319(part).

Cross-References

Costs, Title 25, ch. 10.

39-3-514. Punishment of employer for contempt. In event the employer fails for 30 days or more to pay the costs of the proceeding and/or fails to furnish the bond required by the court, the court may proceed against and punish said employer for contempt of court.

History: En. Sec. 9, Ch. 39, L. 1939; R.C.M. 1947, 41-1320.

Cross-References

Contempts, Title 3, ch. 1, part 5.

39-3-515. Publication of notice of court order. In the discretion of the court, it may order the clerk of the court to publish a brief notice or memorandum in a newspaper published in the county of the entry of the order against the employer requiring said employer to furnish said bond. Said publication shall be for 4 consecutive weeks. The cost of such publication shall be assessed against the employer as one of the costs of the proceeding.

History: En. Sec. 10, Ch. 39, L. 1939; R.C.M. 1947, 41-1321.

39-3-516. Review of court order by supreme court. In event any employer against whom an order to furnish the bond described in this part feels aggrieved by any order or injunction of the district court, he shall be entitled, upon payment for the transcript of record, to have his objections and exceptions reviewed and determined by the supreme court as upon a writ of certiorari.

History: En. Sec. 12, Ch. 39, L. 1939; R.C.M. 1947, 41-1323.

39-3-517. Suit on bond. Any person whose wages or salary has remained unpaid for 15 days or more after due shall have a right to sue upon said bond for the recovery of his wages or salary.

History: En. Sec. 6, Ch. 39, L. 1939; R.C.M. 1947, 41-1317(part).

39-3-518. Attorney's fee for suit on bond. In event any person whose wages or salary has remained unpaid for 15 days or more after due shall bring suit as in 39-3-517 provided, the court shall assess as costs against the unsuccessful party a reasonable attorney's fee.

History: En. Sec. 11, Ch. 39, L. 1939; R.C.M. 1947, 41-1322.

Cross-References

Attorney fees, Title 25, ch. 10, part 3.

39-3-519. Clarification as to construction and applicability of part. (1) Nothing contained in this part shall be considered as requiring any person, firm, partnership, or corporation to file a bond or bonds if he or it pays for all labor in full each day or where such labor has been performed upon a written building or construction contract to furnish material or other consideration as well as labor.

(2) Nothing herein shall prohibit the making or entering into of any wage or working agreement such as grubstake agreements and/or similar agreements, provided such employer or contractor keeps in force proper workers' compensation insurance.

History: En. Sec. 6, Ch. 39, L. 1939; R.C.M. 1947, 41-1317(part).

39-3-520. Remedy cumulative. The remedy herein provided for the greater security for the payment of wages and salaries and the collection thereof shall be in addition to any remedy now provided by law for the payment and collection of wages and salaries.

History: En. Sec. 13, Ch. 39, L. 1939; R.C.M. 1947, 41-1324.

Cross-References

Civil remedies in general, Title 27.

Part 6

Restaurant, Bar, and Tavern Wage Protection Act (Repealed. Sec. 11, Ch. 90, L. 1995)

Part Compiler's Comments

Histories of Repealed Sections:

39-3-601. En. Sec. 1, Ch. 155, L. 1965; R.C.M. 1947, 41-2001.

39-3-602. En. Sec. 3, Ch. 155, L. 1965; amd. Sec. 2, Ch. 198, L. 1974; amd. Sec. 1, Ch. 238, L. 1975; R.C.M. 1947, 41-2003; amd. Sec. 1, Ch. 349, L. 1981; amd. Sec. 1, Ch. 366, L. 1983.

39-3-603. En. Sec. 4, Ch. 155, L. 1965; amd. Sec. 3, Ch. 198, L. 1974; amd. Sec. 118, Ch. 387, L. 1975; R.C.M. 1947, 41-2004; amd. Sec. 2, Ch. 366, L. 1983; amd. Sec. 1, Ch. 546, L. 1989.

39-3-604. Ap. p. Sec. 5, Ch. 155, L. 1965; amd. Sec. 4, Ch. 198, L. 1974; Sec. 41-2005, R.C.M. 1947; Ap. p. Sec. 6, Ch. 155, L. 1965; amd. Sec. 5, Ch. 198, L. 1974; amd. Sec. 2, Ch. 238, L. 1975; Sec. 41-2006, R.C.M. 1947; R.C.M. 1947, 41-2005, 41-2006; amd. Sec. 1, Ch. 60, L. 1979; amd. Sec. 3, Ch. 366, L. 1983; amd. Sec. 2, Ch. 546, L. 1989; amd. Sec. 5, Ch. 490, L. 1991; amd. Sec. 14, Ch. 630, L. 1993.

39-3-605. En. Sec. 10, Ch. 155, L. 1965; amd. Sec. 3, Ch. 238, L. 1975; R.C.M. 1947, 41-2010(part); amd. Sec. 4, Ch. 366, L. 1983; amd. Sec. 3, Ch. 546, L. 1989; amd. Sec. 6, Ch. 490, L. 1991.

39-3-606. En. Sec. 10, Ch. 155, L. 1965; amd. Sec. 3, Ch. 238, L. 1975; R.C.M. 1947, 41-2010(part).

39-3-607. En. Sec. 8, Ch. 155, L. 1965; R.C.M. 1947, 41-2008; amd. Sec. 5, Ch. 366, L. 1983.

39-3-608. En. Sec. 2, Ch. 155, L. 1965; amd. Sec. 1, Ch. 198, L. 1974; R.C.M. 1947, 41-2002; amd. Sec. 6, Ch. 366, L. 1983.

Part 7

Contractors' Bonds for Wages and Benefits (Repealed)

39-3-701. Repealed. Sec. 14, Ch. 548, L. 1997.

History: (1), (2)En. 41-2501 by Sec. 1, Ch. 208, L. 1975; Sec. 41-2701, R.C.M. 1947; (3)En. 41-2504 by Sec. 4, Ch. 208, L. 1975; Sec. 41-2704, R.C.M. 1947; R.C.M. 1947, 41-2701, 41-2704(2).

39-3-702. Repealed. Sec. 14, Ch. 548, L. 1997.

History: En. 41-2505 by Sec. 5, Ch. 208, L. 1975; R.C.M. 1947, 41-2705.

39-3-703. Repealed. Sec. 14, Ch. 548, L. 1997.

History: En. 41-2502 by Sec. 2, Ch. 208, L. 1975; R.C.M. 1947, 41-2702(1), (3); amd. Sec. 27, Ch. 500, L. 1995.

39-3-704. Repealed. Sec. 31, Ch. 500, L. 1995.

History: En. 41-2504 by Sec. 4, Ch. 208, L. 1975; R.C.M. 1947, 41-2704(1).

39-3-705. Repealed. Sec. 14, Ch. 548, L. 1997.

History: En. 41-2503 by Sec. 3, Ch. 208, L. 1975; R.C.M. 1947, 41-2703; amd. Sec. 28, Ch. 500, L. 1995.

39-3-706. Repealed. Sec. 14, Ch. 548, L. 1997.

History: En. 41-2502 by Sec. 2, Ch. 208, L. 1975; R.C.M. 1947, 41-2702(2); amd. Sec. 29, Ch. 500, L. 1995.

CHAPTER 4

HOURS OF LABOR IN CERTAIN EMPLOYMENTS

Part 1 — Hours of Labor—Penalties and Liability for Violations Thereof

39-4-101. Hoisting engineers.
39-4-102. Drivers and attendants of motor buses.
39-4-103. Underground miners and smeltermen.
39-4-104. Strip mining.
39-4-105. Retail stores.
39-4-106. Telephone operators.
39-4-107. State and municipal governments, school districts, mines, mills, and smelters.
39-4-108. Repealed.
39-4-109. Cement plants and quarries.
39-4-110. Sugar refineries.
39-4-111. Restaurants.
39-4-112. Persons employed about public amusements.

Part 1

Hours of Labor — Penalties and Liability for Violations Thereof

Part Cross-References

Eight-hour maximum workday, Art. XII, sec. 2, Mont. Const.

Classification of offenses, 45-1-201.

Misdemeanor defined, 45-2-101.

39-4-101. Hoisting engineers. (1) It shall be unlawful for any person or persons, company, or corporation to operate or handle or to induce, persuade, or prevail upon any person or persons to operate or handle for more than 8 hours in 24 hours of each day any hoisting engine at or in any mine.

(2) This section shall apply only to such plants as are in continuous operation or are operated 16 or more hours in 24 hours of each day or at or in any mine where said hoisting engine develops 15 or more horsepower or at or in any mine wherein there are 15 or more men employed underground in 24 hours of each day. However, the provisions of this section shall not apply to any person or persons operating any hoisting engine more than 8 hours in each 24 hours for the purpose of relieving another employee in case of sickness or other unforeseen cause or causes.

(3) Any person or persons, company, or corporation who shall violate any of the provisions of this section shall upon conviction be punished by a fine of not less than $10 or more than $100. Each and every day that such person or persons, company, or corporation may continue to violate any of the provisions of this section shall be considered a separate and distinct offense and shall be punishable as such.

History: (1), (2)En. Sec. 1, Ch. 53, L. 1903; re-en. Sec. 1734, Rev. C. 1907; re-en. Sec. 3068, R.C.M. 1921; re-en. Sec. 3068, R.C.M. 1935; Sec. 41-1101, R.C.M. 1947; (3)En. Sec.

2, Ch. 53, L. 1903; re-en. Sec. 1735, Rev. C. 1907; re-en. Sec. 3069, R.C.M. 1921; re-en. Sec. 3069, R.C.M. 1935; Sec. 41-1102, R.C.M. 1947; R.C.M. 1947, 41-1101, 41-1102.

39-4-102. Drivers and attendants of motor buses. (1) Drivers or attendants of motor buses employed in the state may not be employed for more than 8 hours in any 24-hour period. Drivers or attendants of motor buses must be allowed a rest of at least 12 hours between the completion of their services in any 24-hour period and the beginning of their services in the succeeding 24-hour period. In computing the number of hours of employment made by the provisions of this section, evidence may be introduced showing that part of such time is consumed prior to entry within the state.

(2) The provisions of this section do not apply to drivers or attendants employed by a city, town, county, or political subdivision thereof.

(3) The provisions of this section do not apply when life is in danger or property is in imminent danger of destruction; or in case of delay due to accident or impassable roads, abnormal road conditions, or snow blockades; or when mails for the drivers or attendants are delayed.

(4) "Attendant", for the purpose of this section, is defined as any employee engaged for a portion of a day driving or repairing a motor bus and who is required to remain on the vehicle as a relief driver or mechanic for time in excess of the 8-hour period for which he is rightly employed.

(5) Any employer or supervisor in charge of employees who requires a driver or attendant as above defined to labor contrary to the provisions of this section is guilty of a misdemeanor and upon conviction is punishable by a fine of not less than $100 or more than $600 or by imprisonment of not less than 30 days or more than 7 months or both such fine and imprisonment.

(6) All motor bus companies operating lines in this state are liable in damage for all injuries to the person resulting from the violation of the provisions of this section.

History: En. Secs. 1, 2, 3, Ch. 76, L. 1935; re-en. Secs. 3069.1, 3069.2, 3069.3, R.C.M. 1935; R.C.M. 1947, 41-1103, 41-1104, 41-1105; amd. Sec. 1, Ch. 126, L. 1979; amd. Sec. 20, Ch. 397, L. 1979.

39-4-103. Underground miners and smeltermen. (1) The period of employment of workers in all underground mines or workings, including railroad or other tunnels, is 8 hours per day, except in cases of emergency when life and property are in imminent danger.

(2) The period of employment of workers in smelters, stamp mills, sampling works, concentrators, and all other institutions for the reduction of ores and refining of ores or metals is 8 hours per day, except in cases of emergency where life or property is in imminent danger.

(3) Any person, corporation, agent, manager, or employer who violates any of the provisions of this section is guilty of a misdemeanor and upon conviction thereof for each offense is subject to a fine of not less than $100 or more than $600 or by imprisonment in the county jail for a period of not less than 1 month or more than 7 months or by both such fine and imprisonment.

History: (1)En. Sec. 1, p. 62, L. 1901; re-en. Sec. 1736, Rev. C. 1907; amd. Sec. 1, Ch. 21, L. 1911; re-en. Sec. 3071, R.C.M. 1921; re-en. Sec. 3071, R.C.M. 1935; Sec. 41-1107, R.C.M. 1947; (2)En. Sec. 2, p. 63, L. 1901; re-en. Sec. 1737, Rev. C. 1907; re-en. Sec. 3072, R.C.M. 1921; re-en. Sec. 3072, R.C.M. 1935; Sec. 41-1108, R.C.M. 1947; (3)En. Sec. 3, p. 63, L. 1901; re-en. Sec. 1738, Rev. C. 1907; re-en. Sec. 3073, R.C.M. 1921; amd. Sec. 1, Ch.

116, L. 1929; re-en. Sec. 3073, R.C.M. 1935; Sec. 41-1109, R.C.M. 1947; R.C.M. 1947, 41-1107, 41-1108, 41-1109; amd. Sec. 21, Ch. 397, L. 1979.

39-4-104. Strip mining. (1) For the purpose of this section, "strip mining" is defined as the removal of the overburden and coal or other materials from the ground and all of the operations pertaining thereto, without the necessity of providing timbers for the holding of said ground in place.

(2) A period of not more than 8 hours will constitute a day's labor of all employees working in strip mining, except in cases of emergencies for the protection of life or property when same is in danger.

(3) Any person, company, corporation, or lessee of the same who shall violate the provisions of this section shall upon conviction be punished by a fine of not less than $50 or more than $600 or by imprisonment of not less than 30 days or more than 7 months or both such fine and imprisonment. Each and every day that such person, company, corporation, or lessee may continue to violate the provisions of this section shall be considered a separate and distinct offense and shall be punished as such.

History: En. Secs. 1, 2, 3, Ch. 76, L. 1933; re-en. Secs. 3546.7, 3546.8, 3546.9, R.C.M. 1935; R.C.M. 1947, 41-1110, 41-1111, 41-1112.

39-4-105. Retail stores. (1) A period of 8 hours shall constitute a day's work and a period of not to exceed 48 hours shall constitute a week's work in all cities and towns having a population of 2,500 or over for all persons employed in retail stores and in all leased businesses where the lessor dictates the price, kind of merchandise that is sold, and the hours and conditions of operation of the business; all persons employed in delivering goods sold in such stores; all persons employed in wholesale warehouses used for supplying retail establishments with goods; and all persons employed in delivering goods to retail establishments from such wholesale warehouses.

(2) The provisions of this section shall not apply to registered pharmacists or assistant pharmacists.

(3) Any person, corporation, agent, manager, or employer who shall violate any of the provisions of this section shall be guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not less than $50 or more than $600 or by imprisonment in the county jail for not less than 30 days or more than 7 months or by both such fine and imprisonment.

History: (1)En. Sec. 1, Ch. 8, Ex. L. 1933; re-en. Sec. 3073.1, R.C.M. 1935; Sec. 41-1113, R.C.M. 1947; (2)En. Sec. 3, Ch. 8, Ex. L. 1933; re-en. Sec. 3073.3, R.C.M. 1935; Sec. 41-1115, R.C.M. 1947; (3)En. Sec. 2, Ch. 8, Ex. L. 1933; re-en. Sec. 3073.2, R.C.M. 1935; Sec. 41-1114, R.C.M. 1947; R.C.M. 1947, 41-1113, 41-1114, 41-1115.

39-4-106. Telephone operators. (1) On all lines of public telephones operated in whole or in part within this state, it shall hereafter be unlawful for any owner, lessee, company, or corporation to hire or employ any operator or operators, other person or persons to run or operate a telephone board or boards for more than 9 hours in 24 hours in cities or towns having a population of 3,000 inhabitants or over.

(2) The provisions of this section shall not apply to any person or persons, operator or operators operating any telephone board or boards more than 9 hours in each 24 for the purpose of relieving another employee in case of sickness or other unforeseen cause or causes.

(3) Any owner, lessee, company, or corporation who shall violate any of the provisions of this section shall upon conviction be punished by a fine of not less than $100 or more than $500. Each and every day that such owner, lessee, company, or corporation may continue to violate any of the provisions of this section shall be considered a separate and distinct offense and shall be punished as such.

History: (1), (2)En. Sec. 1, Ch. 75, L. 1909; re-en. Sec. 3074, R.C.M. 1921; re-en. Sec. 3074, R.C.M. 1935; Sec. 41-1116, R.C.M. 1947; (3)En. Sec. 2, Ch. 75, L. 1909; re-en. Sec. 3075, R.C.M. 1921; re-en. Sec. 3075, R.C.M. 1935; Sec. 41-1117, R.C.M. 1947; R.C.M. 1947, 41-1116, 41-1117.

39-4-107. State and municipal governments, school districts, mines, mills, and smelters. (1) A period of 8 hours constitutes a day's work in all works and undertakings carried on or aided by any municipal or county government, the state government, or a first-class school district, and on all contracts let by them, and for all janitors (except in courthouses of sixth- and seventh-class counties), engineers, firefighters, caretakers, custodians, and laborers employed in or about any buildings, works, or grounds used or occupied for any purpose by such municipal, county, or state government or first-class school district. A period of 8 hours constitutes a day's work in mills and smelters for the treatment of ores, in underground mines, and in the washing, reducing, and treatment of coal. This subsection does not apply in the event of an emergency when life or property is in imminent danger or to the situations specified in subsections (3) and (4).

(2) The provisions of subsection (1) do not apply to firefighters who are working a work period established in a collective bargaining agreement entered into between a public employer and a firefighters' organization or its exclusive representative.

(3) In counties where regular road and bridge departments are maintained, the county commissioners may, with the approval of the employees or their duly constituted representative, establish a 40-hour workweek consisting of 4 consecutive 10-hour days. No employee may be required to work in excess of 8 hours in any one workday if he prefers not to.

(4) In municipal and county governments, the employer and employee may agree to a workday of more than 8 hours and to a 7-day, 40-hour work period:

(a) through a collective bargaining agreement when a collective bargaining unit represents the employee; or

(b) by the mutual agreement of the employer and employee when no bargaining unit is recognized.

History: (1) thru (3)En. Sec. 1, Ch. 50, L. 1905; amd. Sec. 1, Ch. 108, L. 1907; re-en. Sec. 1739, Rev. C. 1907; amd. Sec. 1, Ch. 30, L. 1917; re-en. Sec. 3079, R.C.M. 1921; Cal. Pol. C. Secs. 3244, 3245; amd. Sec. 2, Ch. 116, L. 1929; re-en. Sec. 3079, R.C.M. 1935; amd. Sec. 1, Ch. 135, L. 1943; amd. Sec. 1, Ch. 244, L. 1957; amd. Sec. 1, Ch. 395, L. 1975; Sec. 41-1121, R.C.M. 1947; (4)En. Sec. 2, Ch. 50, L. 1905; amd. Sec. 2, Ch. 108, L. 1907; re-en. Sec. 1740, Rev. C. 1907; re-en. Sec. 3080, R.C.M. 1921; amd. Sec. 3, Ch. 116, L. 1929; re-en. Sec. 3080, R.C.M. 1935; Sec. 41-1122, R.C.M. 1947; R.C.M. 1947, 41-1121, 41-1122; amd. Sec. 22, Ch. 397, L. 1979; amd. Sec. 2, Ch. 375, L. 1983; amd. Sec. 2, Ch. 640, L. 1983.

Cross-References

State employee classification, compensation, and benefits, Title 2, ch. 18.

Local government — office hours, 7-4-102.

39-4-108. Repealed. Sec. 1, Ch. 381, L. 1979.

History: (1), (2)En. Sec. 1, Ch. 5, L. 1907; Sec. 1741, Rev. C. 1907; re-en. Sec. 3081, R.C.M. 1921; re-en. Sec. 3081, R.C.M. 1935; amd. Sec. 1, Ch. 206, L. 1969; Sec. 41-1123, R.C.M. 1947; (3)En. Sec. 3, Ch. 5, L. 1907; Sec. 1743, Rev. C. 1907; re-en. Sec. 3083, R.C.M. 1921; re-en. Sec. 3083, R.C.M. 1935; Sec. 41-1125, R.C.M. 1947; (4), (5)En. Sec. 2, Ch. 5, L. 1907; Sec. 1742, Rev. C. 1907; re-en. Sec. 3082, R.C.M. 1921; re-en. Sec. 3082, R.C.M. 1935; Sec. 41-1124, R.C.M. 1947; R.C.M. 1947, 41-1123, 41-1124, 41-1125; amd. Sec. 23, Ch. 397, L. 1979.

39-4-109. Cement plants and quarries. (1) A period of 8 hours shall constitute a day's work, except in cases of emergency where life and property are in imminent danger, for all persons employed in or about cement plants and at quarries.

(2) Any person, corporation, agent, manager, or employer who shall violate any of the provisions of this section shall be guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not less than $50 or more than $600 or by imprisonment in the county jail for not less than 30 days or more than 7 months or by both such fine and imprisonment.

History: (1)En. Sec. 1, Ch. 77, L. 1933; re-en. Sec. 3083.1, R.C.M. 1935; Sec. 41-1126, R.C.M. 1947; (2)En. Sec. 2, Ch. 77, L. 1933; re-en. Sec. 3083.2, R.C.M. 1935; Sec. 41-1127, R.C.M. 1947; R.C.M. 1947, 41-1126, 41-1127; amd. Sec. 1, Ch. 281, L. 1985.

39-4-110. Sugar refineries. (1) A period of not to exceed 8 hours constitutes a day's work for all persons employed in or about sugar refineries, except in a case of emergency when life or property is in danger.

(2) The provisions of this section do not apply to beet receiving station employees or superintendents, master mechanics, or beet-end, sugar-end, and Steffan house foremen.

(3) Any person, corporation, agent, manager, or employer who violates the provisions of this section is guilty of a misdemeanor and upon conviction thereof is punishable by a fine of not less than $50 or more than $600 or by imprisonment in the county jail for not less than 30 days or more than 7 months or by both such fine and imprisonment.

History: En. Secs. 1, 2, 3, Ch. 90, L. 1933; re-en. Secs. 3083.3, 3083.4, 3083.5, R.C.M. 1935; R.C.M. 1947, 41-1128, 41-1129, 41-1130; amd. Sec. 24, Ch. 397, L. 1979.

39-4-111. Restaurants. (1) A period of not more than 8 hours shall constitute a day's work, and a period of not to exceed 48 hours shall constitute a week's work for persons employed in or about restaurants, cafes, lunch counters, and other commercial eating establishments. The hours of work must be so arranged that persons employed in or about restaurants, cafes, lunch counters, and other commercial eating establishments shall not be on duty more than 8 hours in the aggregate of any 12 consecutive hours. Such persons shall have at least 12 consecutive hours off duty.

(2) The provisions of this section shall not apply to any person or persons working more than 8 hours during any 12 consecutive hours or more than 48 hours during any week for the purpose of relieving another employee in case of sickness or where the health of the public is imperiled, where life and property are in imminent danger, or for other unforeseen cause or causes.

(3) Any person, corporation, manager, agent, or employer who shall violate any of the provisions of this section shall be guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not less than $25 or more than

$50 or by imprisonment in the county jail for not less than 15 days or more than 60 days or by both such fine and imprisonment.

History: (1), (2)En. Sec. 1, Ch. 199, L. 1939; Sec. 41-1131, R.C.M. 1947; (3)En. Sec. 2, Ch. 199, L. 1939; Sec. 41-1132, R.C.M. 1947; R.C.M. 1947, 41-1131, 41-1132.

39-4-112. Persons employed about public amusements. (1) A period of not to exceed 8 hours shall constitute a day's work and a period of not to exceed 48 hours shall constitute a week's work for persons employed or working in or participating in and about any carnival, circus, derby show, walkathon, marathon dance, marathon race, marathon walk, or other endurance contest by whatever name it may be called within the state. The hours of work must be so arranged that persons employed in or participating or contesting in such an exhibition, show, or contest shall not be on duty more than 8 hours in the aggregate of any 12 consecutive hours. Such persons shall have at least 12 consecutive hours off duty.

(2) The provisions of this section shall not apply to any traveling circus or carnival which does not remain in any one county of the state for a period of more than 3 days and shall not apply to any person or persons working more than 8 hours in each 12 hours for the purpose of relieving another employee in case of sickness or where a breakdown in machinery occurs or where life or property is in imminent danger.

(3) Any person, corporation, agent, manager, employer, employee, contestant, or participant who shall violate the provisions of this section shall be guilty of a misdemeanor and upon conviction thereof shall be punished for the first offense by a fine of not less than $50. For a second offense, he shall be punished by a fine of not less than $100 or more than $500 or by imprisonment in the county jail for not less than 90 days or more than 6 months or by both such fine and imprisonment. For a third or subsequent offense, he shall be punished by a fine of $500 and imprisonment in the county jail for a term of 6 months. Each day's violation of this section shall constitute a separate offense within the meaning of this section.

History: (1), (2)En. Sec. 1, Ch. 21, L. 1941; Sec. 41-1133, R.C.M. 1947; (3)En. Sec. 2, Ch. 21, L. 1941; Sec. 41-1134, R.C.M. 1947; R.C.M. 1947, 41-1133, 41-1134.

CHAPTER 5

THE EMPLOYMENT AGENCY ACT

(Repealed)

Part 1 — General Provisions

(Repealed. Sec. 128, Ch. 429, L. 1995)

Part 2 — Licensing

(Repealed. Sec. 128, Ch. 429, L. 1995)

Part 3 — Contracts, Fees, and General Operation of Business

(Repealed)

39-5-301 through 39-5-308. Repealed.
39-5-309. Repealed.

39-5-310. Repealed.
39-5-311. Repealed.
39-5-312. Repealed.

Part 4 — Investigations and Enforcement (Repealed. Sec. 128, Ch. 429, L. 1995)

Part 1

General Provisions (Repealed. Sec. 128, Ch. 429, L. 1995)

Part Compiler's Comments

Histories of Repealed Sections:

39-5-101. En. Sec. 1, Ch. 430, L. 1971; R.C.M. 1947, 41-1417.

39-5-102. En. Sec. 2, Ch. 430, L. 1971; R.C.M. 1947, 41-1418; amd. Sec. 1, Ch. 156, L. 1979; amd. Sec. 25, Ch. 397, L. 1979; amd. Sec. 1, Ch. 33, L. 1981; amd. Sec. 1, Ch. 483, L. 1987.

39-5-103. En. Sec. 7, Ch. 430, L. 1971; R.C.M. 1947, 41-1423(1); amd. Sec. 4, Ch. 483, L. 1987.

39-5-104. En. Sec. 22, Ch. 430, L. 1971; R.C.M. 1947, 41-1438(1).

39-5-105. En. Sec. 22, Ch. 430, L. 1971; R.C.M. 1947, 41-1438(2).

Part 2

Licensing (Repealed. Sec. 128, Ch. 429, L. 1995)

Part Compiler's Comments

Histories of Repealed Sections:

39-5-201. En. Sec. 8, Ch. 430, L. 1971; R.C.M. 1947, 41-1424.

39-5-202. En. Sec. 10, Ch. 430, L. 1971; R.C.M. 1947, 41-1426; amd. Sec. 26, Ch. 397, L. 1979; amd. Sec. 4, Ch. 483, L. 1987.

39-5-203. En. Sec. 13, Ch. 430, L. 1971; R.C.M. 1947, 41-1429; amd. Sec. 4, Ch. 483, L. 1987.

39-5-204. En. Sec. 14, Ch. 430, L. 1971; R.C.M. 1947, 41-1430; amd. Sec. 4, Ch. 483, L. 1987.

39-5-205. En. Sec. 22, Ch. 430, L. 1971; R.C.M. 1947, 41-1438(3); amd. Sec. 5, Ch. 483, L. 1987.

39-5-206. En. Sec. 9, Ch. 430, L. 1971; amd. Sec. 3, Ch. 237, L. 1975; R.C.M. 1947, 41-1425; amd. Sec. 4, Ch. 483, L. 1987.

39-5-207. En. Sec. 17, Ch. 430, L. 1971; R.C.M. 1947, 41-1433(1).

39-5-208. En. Sec. 11, Ch. 430, L. 1971; R.C.M. 1947, 41-1427.

39-5-209. En. Sec. 12, Ch. 430, L. 1971; R.C.M. 1947, 41-1428; amd. Sec. 4, Ch. 483, L. 1987.

Part 3

Contracts, Fees, and General Operation of Business (Repealed)

39-5-301 through 39-5-308. Repealed. Sec. 128, Ch. 429, L. 1995.

Compiler's Comments

Histories of Repealed Sections:

39-5-301. En. Sec. 3, Ch. 430, L. 1971; R.C.M. 1947, 41-1419(part); amd. Sec. 4, Ch. 483, L. 1987.

39-5-302. En. Sec. 4, Ch. 430, L. 1971; R.C.M. 1947, 41-1420.

39-5-303. En. Sec. 5, Ch. 430, L. 1971; R.C.M. 1947, 41-1421(part); amd. Sec. 1, Ch. 365, L. 1981; amd. Sec. 1, Ch. 339, L. 1983; amd. Sec. 4, Ch. 483, L. 1987.

39-5-304. En. Sec. 17, Ch. 430, L. 1971; R.C.M. 1947, 41-1433(4).

39-5-305. En. Sec. 17, Ch. 430, L. 1971; R.C.M. 1947, 41-1433(3).

39-5-306. En. Sec. 17, Ch. 430, L. 1971; R.C.M. 1947, 41-1433(5).

39-5-307. En. Sec. 6, Ch. 430, L. 1971; amd. Sec. 2, Ch. 237, L. 1975; R.C.M. 1947, 41-1422.

39-5-308. (1)En. Sec. 15, Ch. 430, L. 1971; Sec. 41-1431, R.C.M. 1947; (2)En. Sec. 17, Ch. 430, L. 1971; Sec. 41-1433, R.C.M. 1947; (3)En. Sec. 5, Ch. 430, L. 1971; Sec. 41-1421, R.C.M. 1947; R.C.M. 1947, 41-1421(part), 41-1431, 41-1433(2); amd. Sec. 2, Ch. 483, L. 1987.

39-5-309. Repealed. Sec. 4, Ch. 365, L. 1981.

History: En. 41-1431.1 by Sec. 1, Ch. 237, L. 1975; R.C.M. 1947, 41-1431.1(1), (2).

39-5-310. Repealed. Sec. 128, Ch. 429, L. 1995.

History: En. Sec. 17, Ch. 430, L. 1971; R.C.M. 1947, 41-1433(7); amd. Sec. 2, Ch. 365, L. 1981.

39-5-311. Repealed. Sec. 128, Ch. 429, L. 1995.

History: (1), (2)En. 41-1431.1 by Sec. 1, Ch. 237, L. 1975; Sec. 41-1431.1, R.C.M. 1947; (3)En. Sec. 16, Ch. 430, L. 1971; Sec. 41-1432, R.C.M. 1947; R.C.M. 1947, 41-1431.1(3), 41-1432; amd. Sec. 3, Ch. 365, L. 1981; amd. Sec. 4, Ch. 483, L. 1987.

39-5-312. Repealed. Sec. 128, Ch. 429, L. 1995.

History: En. Sec. 17, Ch. 430, L. 1971; R.C.M. 1947, 41-1433(6).

Part 4

Investigations and Enforcement (Repealed. Sec. 128, Ch. 429, L. 1995)

Part Compiler's Comments

Histories of Repealed Sections:

39-5-401. (1), (2)En. Sec. 7, Ch. 430, L. 1971; Sec. 41-1423, R.C.M. 1947; (3)En. Sec. 3, Ch. 430, L. 1971; Sec. 41-1419, R.C.M. 1947; R.C.M. 1947, 41-1419(part), 41-1423(2), (3); amd. Sec. 3, Ch. 483, L. 1987.

39-5-402. En. 41-1434.1 by Sec. 4, Ch. 237, L. 1975; R.C.M. 1947, 41-1434.1; amd. Sec. 5, Ch. 483, L. 1987.

39-5-403. En. Sec. 18, Ch. 430, L. 1971; R.C.M. 1947, 41-1434; amd. Sec. 27, Ch. 397, L. 1979; amd. Sec. 4, Ch. 483, L. 1987.

39-5-404. En. Sec. 19, Ch. 430, L. 1971; R.C.M. 1947, 41-1435; amd. Sec. 28, Ch. 397, L. 1979.

39-5-405. En. Sec. 20, Ch. 430, L. 1971; R.C.M. 1947, 41-1436; amd. Sec. 29, Ch. 397, L. 1979.

39-5-406. En. Sec. 21, Ch. 430, L. 1971; R.C.M. 1947, 41-1437.

CHAPTER 6

APPRENTICESHIP

Part 1 — General Provisions

39-6-101. Duties of department.
39-6-102. Powers of department.
39-6-103. Responsibilities of state and local boards responsible for vocational education.
39-6-104. Local and state joint apprenticeship committees.
39-6-105. Apprenticeship agreements.
39-6-106. Contents of apprenticeship agreements — credit for prior training or experience.
39-6-107. Provisions of chapter voluntary.

Part 1
General Provisions

39-6-101. Duties of department. (1) The department of labor and industry shall:

(a) encourage and promote the making of apprenticeship agreements conforming to the standards established by or in accordance with this chapter;

(b) register such apprenticeship agreements as are in the best interests of the apprenticeship and conform to the standards established by or in accordance with this chapter;

(c) keep a record of apprenticeship agreements and, upon performance thereof, issue certificates of completion of apprenticeship;

(d) terminate or cancel any apprenticeship agreements in accordance with the provisions of such agreements; and

(e) provide assistance for the development of on-the-job training programs in nonapprenticeable occupations;

(f) establish standards for apprenticeship agreements in conformity with the provisions of this chapter;

(g) issue such rules as may be necessary to carry out the intent and purposes of this chapter; and

(h) perform such other duties as may be required by federal regulations, provided that such federal regulations are not in conflict with this chapter.

(2) Not less often than once every 2 years, the department shall make a report of its activities and findings to the governor and, as provided in 5-11-210, to the legislature. The department shall also make the report available to the public.

History: Ap.p. Sec. 2, Ch. 149, L. 1941; amd. Sec. 2, Ch. 183, L. 1957; amd. Sec. 2, Ch. 160, L. 1963; Sec. 41-1202, R.C.M. 1947; Ap.p. Sec. 1, Ch. 149, L. 1941; amd. Sec. 1, Ch. 99, L. 1947; amd. Sec. 1, Ch. 183, L. 1957; amd. Sec. 1, Ch. 160, L. 1963; amd. Sec. 16, Ch. 439, L. 1975; Sec. 41-1201, R.C.M. 1947; R.C.M. 1947, 41-1201(b), 41-1202(1) thru (4); amd. Sec. 1, Ch. 272, L. 1979; amd. Sec. 33, Ch. 112, L. 1991.

39-6-102. Powers of department. (1) The department of labor and industry may accept from the federal government or any agency thereof or from any state agency any funds made available to carry out purposes within the scope of the activities and purposes of the department under this chapter and to use such funds as said department may direct for the purposes for which said funds are made available.

(2) The department may act to bring about the settlement of differences arising out of the apprenticeship agreement where such differences cannot be adjusted locally or in accordance with the established trade procedure.

History: (1)En. Sec. 1, Ch. 149, L. 1941; amd. Sec. 1, Ch. 99, L. 1947; amd. Sec. 1, Ch. 183, L. 1957; amd. Sec. 1, Ch. 160, L. 1963; amd. Sec. 16, Ch. 439, L. 1975; Sec. 41-1201, R.C.M. 1947; (2)En. Sec. 2, Ch. 149, L. 1941; amd. Sec. 2, Ch. 183, L. 1957; amd. Sec. 2, Ch. 160, L. 1963; Sec. 41-1202, R.C.M. 1947; R.C.M. 1947, 41-1201(c), 41-1202(part(5)).

Cross-References

Management of federal funds, Title 17, ch. 3, part 1.

39-6-103. Responsibilities of state and local boards responsible for vocational education. Related and supplemental instruction for apprentices, coordination of instruction with job experiences, and the selection and training of teachers and coordinators for such instruction shall be the responsibility of state and local boards responsible for vocational education.

History: **En. Sec. 2, Ch. 149, L. 1941; amd. Sec. 2, Ch. 183, L. 1957; amd. Sec. 2, Ch. 160, L. 1963; R.C.M. 1947, 41-1202(part).**

Cross-References

Regulation of vocational education, Title 20, ch. 7, part 3.

39-6-104. Local and state joint apprenticeship committees. (1) Local and state joint apprenticeship committees may be approved in any trade or group of trades in cities or trade areas by the department of labor and industry whenever the apprentice training needs of such trade or group of trades justifies such establishment.

(2) Such local or state joint apprenticeship committees shall be composed of an equal number of employer and employee representatives chosen from names submitted by the respective local or state employer and employee organizations in such trade or group of trades. In a trade or group of trades in which there is no bona fide employer or employee organization, the joint committee shall be composed of persons known to represent the interests of employers and of employees, respectively, or a state joint apprenticeship committee may be approved as or the department may act itself as the joint committee in such trade or group of trades.

(3) Subject to the review of the department and in accordance with the standards established by this chapter and by the department, such committee shall devise standards for apprenticeship agreements and give such aid as may be necessary in their operation in their respective trades and localities.

History: **En. Sec. 3, Ch. 149, L. 1941; R.C.M. 1947, 41-1203.**

39-6-105. Apprenticeship agreements. (1) For the purpose of this chapter, an apprenticeship agreement is:

(a) an individual written agreement between an employer and apprentice;

(b) a written agreement between an employer or an association of employers and an organization of employees describing conditions of employment for apprentices; or

(c) a written statement describing conditions of employment for apprentices in a plant where there is no bona fide employee organization.

(2) All such agreements shall conform to the basic standards and other provisions of this chapter.

History: **En. Sec. 5, Ch. 149, L. 1941; R.C.M. 1947, 41-1205.**

39-6-106. Contents of apprenticeship agreements — credit for prior training or experience. (1) Apprenticeship agreements shall contain:

(a) a statement of the trade or craft to be taught and the required hours for completion of apprenticeship, which must be not less than 2,000 hours of reasonably continuous employment;

(b) a statement of the processes in the trade or craft divisions in which the apprentice is to be taught and the approximate amount of time to be spent at each process;

(c) a statement of the number of hours to be spent by the apprentice in related and supplemental instruction, which is recommended to be 144 hours per year;

(d) a statement that apprentices must be not less than 16 years of age;

(e) a statement of the progressively increasing scale of wages to be paid the apprentice;

(f) provision for a period of probation during which the department of labor and industry must terminate an apprenticeship agreement at the request in writing of any party thereto. After the probationary period, the department may terminate the registration of an apprentice upon agreement of the parties.

(g) provision that the services of the department may be utilized for consultation regarding the settlement of differences arising out of the apprenticeship agreement where such differences cannot be adjusted locally or in accordance with the established trade procedure;

(h) provision that if an employer is unable to fulfill his obligation under the apprenticeship agreement, he may transfer the obligation to another employer if the other employer has been approved as a training facility;

(i) provision for the specification of the ratio of apprentices to journeymen. The department will continue to honor and recognize ratio provisions as established in existing labor/management bargaining agreements or as established by an industry practice.

(j) such additional standards as may be prescribed in accordance with this chapter.

(2) An apprentice who, prior to entering into an agreement, has had training or experience in the trade or craft in which he is employed as an apprentice may be granted full or partial credit for the training or experience on the recommendation of the employer or the joint apprenticeship committee and with the approval of the department.

History: En. Sec. 4, Ch. 149, L. 1941; R.C.M. 1947, 41-1204; amd. Sec. 2, Ch. 272, L. 1979; amd. Sec. 30, Ch. 397, L. 1979.

39-6-107. Provisions of chapter voluntary. The provisions of this chapter shall apply to a person, firm, corporation, or craft only after such person, firm, corporation, or craft has voluntarily elected to conform with its provisions.

History: En. Sec. 6, Ch. 149, L. 1941; R.C.M. 1947, 41-1206.

CHAPTER 7

WOMEN IN EMPLOYMENT DISPLACED HOMEMAKERS

Part 1 — Duties of Department of Labor and Industry

39-7-101. Legislative policy.
39-7-102. Rules of procedure and practice.
39-7-103. Duties of department.
39-7-104. Department to work in close cooperation with commission on human rights.

Part 2 — Maternity Leave (Repealed and Renumbered. Sec. 2, 3, Ch. 285, L. 1983)

Part 3 — Displaced Homemakers

39-7-301. Short title.
39-7-302. Purpose.

39-7-303. Definitions.
39-7-304. Multipurpose service programs for displaced homemakers — administrators.
39-7-305. Programs to aid displaced homemakers.
39-7-306. Rulemaking duties of commissioner.
39-7-307. Acceptance of funds by administrator of local program.
39-7-308. Evaluation of multipurpose service programs — reports to the commissioner.
39-7-309. Staff of service programs.
39-7-310. Partial funding from local community.

Parts 4 and 5 reserved

Part 6 — Incentive Program—Child Care Assistance
(Repealed. Sec. 315, Ch. 42, L. 1997;
Sec. 51, Ch. 486, L. 1997)

Part 1

Duties of Department of Labor and Industry

39-7-101. Legislative policy. This part establishes as an affirmative policy of this state within the department of labor and industry procedures which will enable women to contribute to society according to their fullest possible potential.

History: En. Sec. 1, Ch. 466, L. 1973; R.C.M. 1947, 41-2401.

Cross-References

Comparable worth law, 2-18-208, 2-18-209.

Equal pay for equal work, 39-3-104.

Freedom from sex discrimination in employment, 49-1-102, 49-2-303, 49-3-103, 49-3-201 through 49-3-203.

39-7-102. Rules of procedure and practice. The commissioner of the department of labor and industry may issue rules of procedure and practice consistent with the Montana Administrative Procedure Act in order to administer and carry out the purposes of this part.

History: En. Sec. 3, Ch. 466, L. 1973; R.C.M. 1947, 41-2403.

Cross-References

Administrative rulemaking procedure, Title 2, ch. 4, parts 1 through 3.

39-7-103. Duties of department. The department of labor and industry shall:

(1) conduct studies about the changing employment needs and problems of women in Montana and make recommendations to the governor and the legislature;

(2) direct public attention to critical employment problems confronting women as wives, mothers, homemakers, and workers;

(3) serve as a clearinghouse for information and materials pertinent to programs and services available to assist and advise women on employment and related matters;

(4) cooperate with governmental departments and agencies primarily involved in curbing job discrimination and in the expansion of employment rights and opportunities available to the women of this state;

(5) conduct periodic conferences throughout the state to make women more aware of employment opportunities, programs, and services available to them;

(6) serve as the central, permanent agency for the coordination and evaluation of employment programs and services for women of the state and as a planning agency for the development of those services;

(7) encourage women's organizations and other groups to institute local self-help activities designed to meet women's employment and related needs;

(8) apply for and receive grants, appropriations, or gifts from any federal, state, or local agency, private foundation, or individual to carry out the purposes of this part.

History: En. Sec. 2, Ch. 466, L. 1973; R.C.M. 1947, 41-2402.

39-7-104. Department to work in close cooperation with commission on human rights. It is the intent of the legislature that the functions in the department of labor and industry delineated in this part pertaining to the status of women shall, where appropriate, be performed in close cooperation with the commission on human rights.

History: En. Sec. 2, Ch. 478, L. 1975.

Cross-References

Commission for Human Rights, 2-15-1706; Title 49, ch. 2, part 2.

Part 2

Maternity Leave (Repealed and Renumbered. Sec. 2, 3, Ch. 285, L. 1983)

Part Compiler's Comments

Histories of Repealed Sections:

39-7-201. En. 41-2601 by Sec. 1, Ch. 320, L. 1975; R.C.M. 1947, 41-2601.

39-7-202. En. 41-2605 by Sec. 5, Ch. 320, L. 1975; R.C.M. 1947, 41-2605.

39-7-205. En. 41-2603 by Sec. 3, Ch. 320, L. 1975; R.C.M. 1947, 41-2603(part).

39-7-206. En. 41-2604 by Sec. 4, Ch. 320, L. 1975; R.C.M. 1947, 41-2604.

39-7-207. En. 41-2603 by Sec. 3, Ch. 320, L. 1975; R.C.M. 1947, 41-2603(part).

39-7-208. En. 41-2606 by Sec. 6, Ch. 320, L. 1975; R.C.M. 1947, 41-2606.

39-7-209. En. Sec. 1, Ch. 286, L. 1979.

Sections Renumbered:

39-7-203. Renumbered 49-2-310.

39-7-204. Renumbered 49-2-311.

Histories of Repealed Sections:

39-7-201. En. 41-2601 by Sec. 1, Ch. 320, L. 1975; R.C.M. 1947, 41-2601.

39-7-202. En. 41-2605 by Sec. 5, Ch. 320, L. 1975; R.C.M. 1947, 41-2605.

39-7-205. En. 41-2603 by Sec. 3, Ch. 320, L. 1975; R.C.M. 1947, 41-2603(part).

39-7-206. En. 41-2604 by Sec. 4, Ch. 320, L. 1975; R.C.M. 1947, 41-2604.

39-7-207. En. 41-2603 by Sec. 3, Ch. 320, L. 1975; R.C.M. 1947, 41-2603(part).

39-7-208. En. 41-2606 by Sec. 6, Ch. 320, L. 1975; R.C.M. 1947, 41-2606.

39-7-209. En. Sec. 1, Ch. 286, L. 1979.

Histories of Renumbered Sections:

39-7-203. Renumbered 49-2-310.

39-7-204. Renumbered 49-2-311.

Part 3

Displaced Homemakers

39-7-301. Short title. This part may be cited as the "Displaced Homemaker Act".

History: En. Sec. 1, Ch. 709, L. 1983.

39-7-302. Purpose. It is the intent of the legislature to provide necessary counseling, training, jobs, services, and health care for displaced homemakers so they may achieve independence and the economic security vital to a productive life.

History: En. Sec. 2, Ch. 709, L. 1983.

Cross-References

Comparable worth law, 2-18-208, 2-18-209.

Equal pay for equal work, 39-3-104.

Freedom from sex discrimination in employment, 49-1-102, 49-2-303, 49-3-103, 49-3-201 through 49-3-203.

39-7-303. Definitions. As used in this part, the following definitions apply:

(1) "Adult" means a person who is 18 years of age or older.

(2) "Commissioner" means the commissioner of labor and industry as provided in 2-15-1701.

(3) "Displaced homemaker" means an adult who:

(a) has worked as an adult primarily without remuneration to care for the home and family and for that reason has diminished marketable skills and who has been dependent on public assistance or on the income of a relative but is no longer supported by that income; or

(b) (i) is a parent whose youngest dependent child will become ineligible to receive financial assistance under the FAIM financial assistance, as defined in 53-2-902, pursuant to Title 53, chapter 4, part 2, within 2 years of the parent's application for displaced homemaker assistance;

(ii) is unemployed or underemployed and is experiencing difficulty in obtaining any employment or suitable employment, as appropriate; or

(iii) meets the qualifications described in subsection (3)(a) or (3)(b) and is a criminal offender.

History: En. Sec. 3, Ch. 709, L. 1983; amd. Sec. 1, Ch. 127, L. 1995; amd. Sec. 2, Ch. 486, L. 1997.

Cross-References

Termination of marriage — support and maintenance, Title 40, ch. 4.

39-7-304. Multipurpose service programs for displaced homemakers — administrators. (1) The commissioner may establish multipurpose service programs for displaced homemakers and may enter into contracts with and make grants to nonprofit agencies or organizations, public or private, to establish, organize, and administer the programs described in 39-7-305.

(2) The commissioner shall contract with an administrator for each program.

History: En. Sec. 4, Ch. 709, L. 1983.

39-7-305. Programs to aid displaced homemakers. (1) The programs must be developed in cooperation with federal, state, and local agencies and with private employers in order to coordinate efforts directed toward enabling the displaced homemaker to maintain economic security and emotional well-being and to avoid unnecessary duplication of services.

(2) The services may include but are not limited to:

(a) job counseling services that are:

(i) specifically designed for displaced homemakers by taking into account and building upon their skills and experiences; and

(ii) operated to counsel displaced homemakers with respect to appropriate job opportunities;

(b) job training and job placement services that:

(i) include training and placement programs for jobs in the public and private sectors;

(ii) assist displaced homemakers in gaining admission to existing public or private job training and educational programs; and

(iii) assist in identifying community needs and creating new jobs in the public and private sectors;

(c) referral to or development of programs for displaced homemakers in cooperation with local agencies that provide information and assistance with respect to health care, financial matters, education, nutrition, and legal problems;

(d) support services, such as:

(i) child care for preschool children;

(ii) transportation assistance; and

(iii) grants for education; and

(e) development of outreach programs to serve rural areas where needs for such programs have been identified.

History: En. Sec. 5, Ch. 709, L. 1983.

39-7-306. Rulemaking duties of commissioner. The commissioner, with the advice of other organizations and agencies who provide services to displaced homemakers, shall adopt rules:

(1) concerning the eligibility of persons who may be served by the program;

(2) concerning a graduated fee schedule for program services;

(3) concerning criteria for making grants as provided for in 39-7-304; and

(4) necessary to carry out the provisions of this part.

History: En. Sec. 6, Ch. 709, L. 1983.

Cross-References

Administrative rulemaking procedure, Title 2, ch. 4, parts 1 through 3.

39-7-307. Acceptance of funds by administrator of local program. The administrator of the local displaced homemaker program may accept, use, and dispose of all grants or contributions of money, services, and property for the purpose of carrying out the provisions of this part. Such grants or contributions may include grants or in-kind contributions from a local governmental unit.

History: En. Sec. 7, Ch. 709, L. 1983.

39-7-308. Evaluation of multipurpose service programs — reports to the commissioner. The administrator of each designated program established under this part shall report annually to the commissioner as prescribed by rule, which report must include:

(1) an evaluation of the effectiveness of the program's job counseling, training, placement referral, support, and outreach services to displaced homemakers; and

(2) an accounting of all expenditures.

History: En. Sec. 8, Ch. 709, L. 1983.

39-7-309. Staff of service programs. To the extent possible, supervisory, technical, and administrative positions in the multipurpose service programs must be filled by displaced homemakers.

History: En. Sec. 9, Ch. 709, L. 1983.

39-7-310. Partial funding from local community. Fifteen percent of the operational costs of a local displaced homemaker program must come from the local community served by the program. The local contribution may include in-kind contributions.

History: En. Sec. 10, Ch. 709, L. 1983.

Parts 4 and 5 reserved

Part 6

Incentive Program — Child Care Assistance (Repealed. Sec. 315, Ch. 42, L. 1997; Sec. 51, Ch. 486, L. 1997)

Part Compiler's Comments

Histories of Repealed Sections:

39-7-601. En. Sec. 1, Ch. 579, L. 1987.

39-7-602. En. Sec. 3, Ch. 579, L. 1987.

39-7-603. En. Sec. 7, Ch. 579, L. 1987; amd. Sec. 1, Ch. 251, L. 1989.

39-7-604. En. Sec. 4, Ch. 579, L. 1987; amd. Sec. 2, Ch. 251, L. 1989.

39-7-605. En. Sec. 5, Ch. 579, L. 1987; amd. Sec. 3, Ch. 251, L. 1989.

39-7-606. En. Sec. 6, Ch. 579, L. 1987; amd. Sec. 4, Ch. 251, L. 1989.

CHAPTER 8

PROFESSIONAL EMPLOYER ORGANIZATIONS AND GROUPS LICENSING

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Part 1
General Provisions

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Requirement of employers to pay unemployment and workers' compensation taxes, 39-51-1103.

39-8-101. Short title — purpose. (1) This chapter may be cited as the "Montana Professional Employer Organizations and Groups Licensing Act".

(2) The legislature recognizes that there is a public need for professional employer services and finds it necessary in the interest of public health, safety, and welfare to establish standards for the operation, regulation, and licensing of professional employer organizations and groups in this state.

History: En. Sec. 1, Ch. 344, L. 1995.

39-8-102. Definitions. As used in this chapter, unless the context indicates otherwise, the following definitions apply:

(1) "Applicant" means a person that seeks to be licensed under this chapter.

(2) "Client" means a person who obtains all or part of its workforce from another person through a professional employer arrangement.

(3) "Controlling person" means an individual who possesses the right to direct the management or policies of a professional employer organization or group through ownership of voting securities, by contract or otherwise.

(4) "Department" means the department of labor and industry.

(5) "Employee leasing arrangement" means an arrangement by contract or otherwise under which a professional employer organization hires its own employees and assigns the employees to work for another person to staff and manage, or to assist in staffing and managing, a facility, function, project, or enterprise on an ongoing basis.

(6) "Licensee" means a person licensed as a professional employer organization or group under this chapter.

(7) "Person" means an individual, association, company, firm, partnership, corporation, or limited liability company.

(8) (a) "Professional employer arrangement" means an arrangement by contract or otherwise under which:

(i) a professional employer organization or group assigns employees to perform services for a client;

(ii) the arrangement is or is intended to be ongoing rather than temporary in nature; and

(iii) the employer responsibilities are shared by the professional employer organization or group and the client.

(b) The term does not include:

(i) services performed by a temporary service contractor;

(ii) arrangements under which a person shares employees with a commonly owned company within the meaning of section 414(b) and (c) of the Internal Revenue Code of 1986, as amended, if:

(A) that person's principal business activity is not entering into professional employer arrangements; and

(B) that person does not represent to the public that the person is a professional employer organization or group; and

(iii) arrangements exist for employment of an independent contractor as defined in 39-71-120.

(9) "Professional employer group" or "group" means at least two but not more than five professional employer organizations, each of which is majority-owned by the same person.

(10) "Professional employer organization" means:

(a) a person that provides services of employees pursuant to one or more professional employer arrangements or to one or more employee leasing arrangements; or

(b) a person that represents to the public that the person provides services pursuant to a professional employer arrangement.

(11) "Temporary service contractor" means a person conducting a business that hires its own employees and assigns them to clients to fulfill a work assignment with a finite ending date to support or supplement the client's workforce in situations resulting from employee absences, skill shortages, seasonal workloads, and special assignments and projects.

History: En. Sec. 2, Ch. 344, L. 1995.

Part 2

Licensing

39-8-201. License required — exemption — rulemaking authority. (1) On or after July 1, 1995, a person who acts as a professional employer organization or group by entering into a professional employer arrangement or an employee leasing arrangement with a client in this state without a license or who violates the provisions of this chapter may be subject to the penalties provided in 39-8-302.

(2) The provisions of this chapter do not apply to a labor organization, the state or its political subdivisions, the United States, or any programs or agencies of those entities.

(3) A license issued under this chapter remains the property of the department and may not be transferred.

(4) The department may adopt rules to implement the provisions of this chapter.

History: En. Sec. 3, Ch. 344, L. 1995.

39-8-202. Initial license application — application fee — standards. (1) An applicant for initial licensure as a professional employer organization or group shall file with the department a completed application on a form provided by the department.

(2) The application must be accompanied by a nonrefundable application fee and any material or information required by the department that demonstrates compliance with the requirements of this chapter. The application fee is:

(a) $750 for a resident or nonresident unrestricted license; and

(b) $500 for a restricted license.

(3) As a condition of licensure under this chapter, an applicant who is not a resident or who is domiciled outside the state must first be licensed as a professional employer organization or group in the state in which the applicant is a resident or is domiciled if licensing is required by that state.

(4) An applicant for licensure as a professional employer organization or group shall meet the following standards:

(a) An individual must be 18 years of age or older.

(b) A partnership or a limited partnership shall provide the names and home addresses of all partners, indicate whether each partner is a general or a limited partner, and include a copy of the partnership agreement or an affidavit signed by all partners acknowledging that no written partnership agreement exists.

(c) A corporation shall state the names and home addresses of all officers, directors, and shareholders who own a 5% or greater interest in the corporation and provide a certificate of good standing from the secretary of state demonstrating that the corporation is qualified to do business in this state.

(d) A limited liability company shall state the names and home addresses of those individuals who own a 5% or greater interest in the limited liability company and provide a certificate of good standing from the secretary of state demonstrating that the company is qualified to do business in this state.

(e) A group:

(i) must be authorized to act on behalf of the group;

(ii) shall include for each professional employer organization within the group the information required in subsection (4); and

(iii) shall guarantee, on a form provided by the department and executed by each professional employer organization within the group, payment of all financial obligations with respect to wages, payroll-related taxes, insurance premiums, and employee benefits of each other member within the group.

(5) An applicant shall also provide:

(a) the trade name or names under which the applicant conducts business, the business's taxpayer or employer identification number, the address of the business's principal place of business in the state, and the addresses of any other offices within the state through which the applicant intends to conduct business as a professional employer organization or group. If the applicant's principal place of business is located in another state, the address must be provided.

(b) a list by jurisdiction of each name under which the applicant has operated in the preceding 5 years, including any alternative names, names of predecessors, and names of related business entities with common majority ownership, and detailed information on the background of each controlling person to the extent required by the department; and

(c) other information requested by the department to show that the applicant and each controlling person are of good moral character, have business integrity, and are financially responsible. "Good moral character" means a personal history of honesty, trustworthiness, and fairness; a good reputation for fair dealings; and respect for the rights of others and for the laws of this state and nation.

(6) Except for an applicant who is granted a restricted license under subsection (8), an applicant shall maintain a tangible accounting net worth of

not less than $50,000, evidenced by providing a financial statement prepared in accordance with generally accepted accounting principles and accompanied by a compilation report by an independent certified public accountant. Documents submitted to establish net worth must reflect net worth as of a date not more than 6 months prior to the date on which the application is submitted. A financial statement submitted must be attested by the president, chief financial officer, and at least one controlling person of the professional employer organization or group. In meeting the specified net worth requirement, the applicant may provide to the department a surety bond, letter of credit, or marketable securities acceptable to the department. A surety will not be acceptable to satisfy this requirement unless the applicant submits sufficient evidence to satisfy the department that the surety has adequate resources to satisfy the obligations of the surety. A surety is subject to audit or verification by the department or its agent.

(7) The applicant shall maintain a positive working capital, as determined in accordance with generally accepted accounting principles.

(8) The department may issue a restricted license for limited operation within this state to a professional employer organization or group that is a resident of or domiciled in another state if:

(a) the applicant's state of residence or domicile provides for licensing of professional employer organizations or groups, the applicant is licensed and in good standing in the state of residence or domicile, and that state grants a similar privilege for restricted licensing to professional employer organizations or groups that are residents of or domiciled in this state and that are licensed under this chapter;

(b) the applicant does not maintain an office, a sales force, or a sales representative in this state and does not solicit clients who are residents of or domiciled in this state; and

(c) the applicant does not have more than 100 leased employees working in this state.

(9) An applicant for a nonresident or restricted license shall file, on a form provided by the department, an appointment of a recognized and approved entity as its attorney to receive service of legal process issued against it in this state.

(10) A license issued under this section remains the property of the department and may not be transferred.

History: **En. Sec. 4, Ch. 344, L. 1995.**

39-8-203. Denial of license application or renewal — hearing. (1) The department shall deny a license application or an application to renew a license if:

(a) the application is not fully completed or properly executed;

(b) documents required to supplement the application are not included in the application packet or are inadequate;

(c) the nonrefundable application or license fee is not submitted or is incorrectly submitted with the application packet;

(d) the applicant or any person named in the application misrepresents material in the application;

(e) the applicant is determined by the department to lack good moral character, business integrity, or financial responsibility; or

(f) the department determines that the applicant has failed to meet or maintain any requirement of this chapter.

(2) Conviction of a crime within the last 7 years does not automatically bar an applicant from obtaining a license or bar a licensee from renewing a license. The department shall consider the type of crime committed, the crime's relevancy to the employee leasing industry, the length of time since the conviction, and any other factor considered relevant by the department.

(3) The department or its agent shall furnish the applicant with a written statement of the reason or reasons for denying the license or license renewal application.

(4) An applicant or licensee may request a hearing before the department within 30 days after receiving the written denial statement. The hearing and appeal must follow the procedures provided in Title 2, chapter 4, parts 6 and 7.

(5) During the hearing and appeal process, a licensee may continue to operate unless the circumstances warrant the ordering of immediate cessation of operations. If the renewal application is rejected, the licensee shall cease operations within this state 30 days after receiving written notification. A licensee who does not comply with the department's order to cease is subject to the penalties provided in 39-8-302.

(6) The department may institute and maintain in the name of the state, through the attorney general or the county attorney of the county in which the violation of an order to cease occurs, an action for an injunction, order, or other civil remedy in district court to enforce its order.

(7) An applicant or licensee is ineligible to reapply for a license for 1 year following final department action denying the issuance of or renewal of a license. The 1-year restriction does not apply to an administrative denial or nonrenewal if the denial or nonrenewal was caused:

(a) by an inadvertent error or omission on the application;

(b) by experience that was insufficiently documented to the department at the time of the previous application;

(c) by a failure to submit the required fees; or

(d) when the applicant or licensee was determined to be ineligible because an individual no longer associated with the professional employer organization or group was determined to lack good moral character, business integrity, or financial responsibility.

History: En. Sec. 5, Ch. 344, L. 1995.

39-8-204. License renewal. (1) Except as provided in subsection (5), a license issued under this chapter is valid for 1 year from the date of issuance unless suspended or revoked.

(2) At least 30 days prior to the expiration of the license, the licensee shall submit an application for renewal of a license on a form prescribed by the department and accompanied by the license fee, as provided in 39-8-205.

(3) A late renewal application may not be processed prior to the expiration of the licensee's current license. A person engaged in an unlicensed activity is subject to the penalty established in 39-8-302.

(4) Denial of a renewal license is subject to review under the provisions of 39-8-203.

(5) If the application fee required in 39-8-202 is paid and accepted, then no additional license fee is required for the first year.

History: En. Sec. 6, Ch. 344, L. 1995.

39-8-205. Renewal fees. (1) The fee for the renewal of a resident or nonresident unrestricted license is $750.

(2) The fee for the renewal of a restricted license is $500.

(3) The application fee required in 39-8-202 does not apply to the renewal of an unrestricted license.

(4) A restricted license may not be granted to a professional employer organization or group that is a resident of or domiciled in another state if the state requires licensing but does not grant a similar privilege for restricted licensing to a licensee who is a resident of or domiciled in this state.

(5) Fees collected must be used by the department to implement this chapter.

History: En. Sec. 7, Ch. 344, L. 1995.

39-8-206. License suspension, revocation, or nonrenewal. (1) In addition to the penalty provided in 39-8-302, the department may suspend for up to 1 year, may permanently revoke, or may refuse to renew a license issued under this chapter if, after notice to the licensee of the charges and after a hearing, the department finds that any of the following exists:

(a) a cause for which issuance of the license could have been refused had it been known to the department at the time of issuance;

(b) a violation of an order of the department or noncompliance with any provision of this chapter;

(c) procurement of or attempting to procure a license through misrepresentation or fraud;

(d) failure to provide a written response to a written inquiry from the department or its agent within 30 days after receiving an inquiry; or

(e) failure to meet or maintain any other requirement of this chapter.

(2) If a license is suspended, revoked, or not renewed, the department shall:

(a) immediately notify by certified mail the licensee and the licensee's workers' compensation carrier; and

(b) require the licensee to:

(i) notify each client by certified mail, return receipt requested, of the suspension, revocation, or nonrenewal using language furnished by the department;

(ii) notify each client in writing that the client shares joint and several liability, retroactive to the date of the client's entering into a contract with the licensee, for any wages, workers' compensation premiums, payroll-related taxes, and any benefits left unpaid by the professional employer organization or group; and

(iii) provide the department with evidence of client notification.

(3) Upon notification, the licensee may appeal the decision of the department pursuant to the procedure provided in 39-8-203.

History: En. Sec. 8, Ch. 344, L. 1995.

39-8-207. Requirements of licensee. (1) A professional employer organization or group shall, by written contract with the client, establish the responsibilities and duties of each party. The contract must disclose to the client:

(a) the services provided, the administrative fee, and the respective rights and obligations of the parties;

(b) a statement providing that the professional employer organization or group:

(i) reserves a right of direction and control over employees assigned to the client's location. The client may retain sufficient direction and control over employees necessary to conduct business and without which the client would be unable to conduct business, discharge fiduciary responsibilities, or comply with state licensing laws.

(ii) assumes responsibility for the payment of wages of employees, workers' compensation premiums, payroll-related taxes, and employee benefits from its own accounts without regard to payments by the client; and

(iii) retains authority to hire, terminate, discipline, and reassign employees. The client has the right to accept or cancel the assignment of an employee.

(c) a statement that, with respect to a worker supplied to a client by a professional employer organization or group, the client shares joint and several liability for any wages, workers' compensation premiums, and payroll-related taxes and for any benefits left unpaid by the professional employer organization or group and that, in the event that the licensee's license is suspended or revoked, this liability is retroactive to the client's entering into a contract with the licensee; and

(d) a statement that the client is responsible for compliance with the Montana Safety Culture Act, Title 39, chapter 71, part 15.

(2) The professional employer organization or group shall:

(a) give written notice of the general nature of the relationship between the professional employer organization or group and the client to each employee assigned to perform services at the client's place of work. The disclosure must provide that the professional employer organization:

(i) reserves a right of direction and control over employees assigned to the client's location. The client may retain sufficient direction and control over employees necessary to conduct business and without which the client would be unable to conduct business, discharge fiduciary responsibilities, or comply with state licensing laws.

(ii) retains authority to hire, terminate, discipline, and reassign employees. The client has the right to accept or cancel the assignment of an employee.

(b) submit to the department, within 90 days of the end of each calendar quarter, information certified by an independent certified public accountant demonstrating that all payroll-related taxes for the quarter have been paid. Upon a showing of reasonable cause, one 30-day extension may be granted for each quarter.

(c) maintain and make available for the department or its agent all records relating to the licensee's business conduct. Records must be maintained for 5 years after terminating an employee leasing arrangement or professional employer arrangement.

(d) notify the department in writing within 20 days of a change of business address or a change in partners, directors, officers, members, or controlling persons designated in the license;

(e) notify the department in writing within 20 days after a client either commences or terminates a professional employer arrangement or an employee leasing arrangement with that professional employer organization or group; and

(f) post the license issued in a conspicuous place in the principal place of business and display, in clear public view in each licensee's office, a notice stating that the professional employer organization or group is licensed and regulated by the department.

(3) When a professional employer organization or group uses a professional employer arrangement with the client, both the professional employer organization or group and the client are the immediate employers of the workers subject to the arrangement for the purposes of the workers' compensation laws of this state. When a professional employer organization or group uses an employee leasing arrangement with the client, the professional employer organization or group is the immediate employer of the workers subject to the arrangement for the purposes of the workers' compensation laws of this state.

(4) A professional employer organization or group shall:

(a) pay wages and collect, report, and pay payroll-related taxes from its own accounts;

(b) pay unemployment taxes, pursuant to 39-51-1103, and provide, maintain, and secure all records and documents required of employers under the unemployment insurance laws of this state. For unemployment reporting purposes, each professional employer organization is the employing unit, as defined in 39-51-201, and shall keep separate records and submit quarterly wage lists for each of its clients.

(c) provide workers' compensation coverage for all employees and provide, maintain, and secure all records and documents required of employers under the workers' compensation laws of this state. A license may not be issued to a professional employer organization or group until the department receives proof of workers' compensation coverage for all employees assigned to any client location in this state.

(5) A professional employer organization or group is the employer for sponsoring and maintaining employee benefit and welfare plans. The plans, if limited to employees of the professional employer organization or group, are not multiple employer welfare arrangements.

(6) A professional employer organization or group shall disclose to the department, to each client, and to its employees information on any health or life fringe benefit program provided for its employees. The information must include:

(a) the type of benefits;

(b) the identity of each insurer providing each type of coverage;

(c) the amount of benefits for each type of coverage and to whom or on whose behalf the benefits will be paid;

(d) the policy limits on each insurance policy; and

(e) whether coverage is fully insured, partially insured, or fully self-funded.

(7) Disclosure required by this section may be made by any written means reasonably calculated to adequately inform the employees, including a summary plan description that meets the requirements of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1001, et seq.), as amended.

(8) (a) Subject to any contrary provisions of the contract between the client and the professional employer organization or group, the professional employer arrangement that exists between the parties must be interpreted for purposes of insurance, bonding, and employer liability pursuant to subsection (8)(b).

(b) The professional employer organization or group:

(i) is entitled, along with the client, to the exclusivity of the remedy under both the workers' compensation and employers' liability provisions of a workers' compensation policy or plan of either party; and

(ii) is not liable for the acts, errors, or omissions of a client or of an employee acting under the direction and control of a client, subject to the provisions of this chapter. Subject to the provisions of this chapter, a client is not liable for the acts, errors, or omissions of a professional employer organization or group or of any employee of a professional employer organization or group acting under the direction and control of the professional employer organization or group.

(9) A professional employer organization that applies for workers' compensation coverage shall also maintain and furnish to the insurer sufficient information to permit the calculation of an experience modification factor for each client employer, including but not limited to:

(a) the client employer's corporate or business name;

(b) the client employer's taxpayer or employer identification number;

(c) the client employer's risk identification number;

(d) a listing of all employees assigned to each client employer and the applicable classification code and payroll; and

(e) the client employer's first report of injury identifying the client employer and any other information necessary to permit the calculation of an experience modification factor for each client employer.

(10) An employee assigned to a client by a professional employer organization or group is considered the employee of the client for purposes of general liability insurance, motor vehicle insurance, fidelity bonds, surety bonds, and liquor liability insurance carried by the client. An employee assigned to a client by a professional employer organization or group is not an employee of the professional employer organization or group for purposes of general liability insurance, motor vehicle insurance, fidelity bonds, surety bonds, or liquor liability insurance carried by the professional employer organization or group unless the employee is included by reference in an employment arrangement contract, insurance contract, or bond.

(11) The sale of professional employer services pursuant to this chapter does not constitute the sale of insurance under Title 33 unless the professional employer organization or group:

(a) undertakes to indemnify another or pay or provide a specified or determinable amount of benefit based on determinable contingencies unless done through a licensed insurer or an employee welfare benefit plan as defined in 29 U.S.C. 1002(1);

(b) solicits, negotiates, effects, procures, delivers, renews, continues, or binds an insurance policy unless done through a licensed insurance producer; or

(c) is not exempt under 33-17-103(4).

(12) A sole proprietor or a working member of a partnership working under a professional employer arrangement may not receive unemployment insurance benefits unless the individual would otherwise be entitled to benefits if the professional employer arrangement did not exist.

(13) If the professional employer organization or group or the client complies with the provisions of 39-71-401 with respect to a worker under the professional employer arrangement, the professional employer organization or group and the client, with respect to those workers, are not uninsured employers, as defined in 39-71-501, and are not subject to the provisions of 39-71-508 or 39-71-515.

History: En. Sec. 9, Ch. 344, L. 1995; amd. Sec. 161, Ch. 42, L. 1997; amd. Sec. 62, Ch. 472, L. 1999.

Compiler's Comments

1999 Amendment: Chapter 472 in (11)(c) after "is" inserted "not". Amendment effective October 1, 1999.

Part 3
Disciplinary Provisions

39-8-301. Deceptive practices prohibited. A professional employer organization or group may not:

(1) make, issue, circulate, or cause to be made, issued, or circulated an estimate, illustration, circular, statement, advertisement, sales presentation, omission, or comparison that misrepresents the benefits, advantages, conditions, or terms of a professional employer arrangement or that is otherwise untrue, deceptive, or misleading;

(2) enter into an agreement to commit or by concerted action commit an act of boycott, coercion, or intimidation that results in unreasonable restraint of or monopoly in the business of professional employer services;

(3) file with the department or other public official or make, publish, disseminate, circulate, or deliver to a person a false statement of financial condition with the intent to deceive;

(4) knowingly:

(a) make a false entry of a material fact in a book, report, or statement of a person; or

(b) omit a material fact pertaining to the business of the person from a book, report, or statement of that person;

(5) permit the use or filing of a name, trade name, fictitious name, or business identity that is the same as or similar to or that may be confused with the name, trade name, fictitious name, or business identity of an existing licensee, governmental agency, or nonprofit organization; or

(6) commit any other practice determined by department rule to be deceptive.

History: En. Sec. 10, Ch. 344, L. 1995.

39-8-302. Disciplinary action against licensee — penalties. (1) The department may deny a license application or may suspend, revoke, or refuse to renew an existing license for a person who:

(a) obtains or renews a license through bribery, fraud, or willful misrepresentation;

(b) engages in fraud, deceit, misrepresentation, or misconduct in:

(i) obtaining or providing workers' compensation or health coverage;

(ii) the classification of employees;

(iii) the reporting of employee wages for purposes of unemployment insurance or workers' compensation benefits; or

(iv) the operation of a professional employer organization or group;

(c) conducts business without a valid license;

(d) fails to maintain evidence of workers' compensation insurance coverage;

(e) transfers or attempts to transfer a license issued pursuant to this chapter; or

(f) violates the provisions of this chapter or a rule issued pursuant to this chapter.

(2) A person who fails to comply with the provisions of this chapter is guilty of a misdemeanor and, upon conviction, is subject to a fine of up to $1,000, imprisonment for not more than 1 year, or both.

History: En. Sec. 11, Ch. 344, L. 1995.

39-8-303. Practice without license — investigation of complaint — injunction. (1) The department shall investigate complaints concerning practice by an unlicensed person of activities for which a license is required under this chapter.

(2) The department may file an action to enjoin a person from practicing without a license as a professional employer organization or group.

History: En. Sec. 12, Ch. 344, L. 1995.

39-8-304. Violation of injunction — penalty. A person who violates an injunction issued under 39-8-303 shall pay a civil penalty, as determined by the court, of not more than $5,000. Fifty percent of the penalty must be deposited in the general fund of the county in which the injunction is issued, and 50% must be deposited in the state general fund.

History: En. Sec. 13, Ch. 344, L. 1995.

39-8-305. Investigations — audits — reviews. (1) The department or its agent may perform an investigation, audit, or review necessary to determine whether a person has violated any provision of this chapter or any rule promulgated by the department to implement this chapter.

(2) Except as provided in subsection (3), material compiled by the department or its agent in an investigation, audit, or review pursuant to this section is a public record and may be disclosed.

(3) Financial information, client lists, and lists of workers that are assigned by a professional employer organization or group and that are obtained by the department or its agent during an investigation, audit, or review are confidential and may not be published or be open to public inspection, except to public employees in the performance of their public duties.

History: En. Sec. 14, Ch. 344, L. 1995.

Part 4

Confidentiality — Applicability of Other Law

39-8-401. Disclosure of information. (1) The department may not disclose to any person the records, statements, or documents received from an applicant, client, or professional employer organization or group, except:

(a) information necessary for public employees in the performance of their public duties; or

(b) in response to an order received by a court of competent jurisdiction upon a finding that the disclosure of the record, statement, or document is necessary because the merits of disclosure clearly exceed the demand for individual privacy.

(2) The department may publish or make available to the public reasonable statistical data or reports regarding professional employer organizations or groups if the data or reports protect the identity of an applicant, client, or professional employer organization or group.

History: En. Sec. 15, Ch. 344, L. 1995.

39-8-402. Other law. (1) This chapter does not exempt a client of a professional employer organization or group or an employee assigned to a client by a professional employer organization or group from other local, state, or federal license or registration requirements.

(2) An employee who is licensed, registered, or certified under law and who is assigned to a client location is an employee of the client for purposes of the license, registration, or certification.

(3) Except as provided in a professional employer arrangement, a professional employer organization or group is not liable for the general debts, obligations, profit losses, business goodwill, or other damages of a client with which it has entered into a professional employer arrangement.

History: En. Sec. 16, Ch. 344, L. 1995.

39-8-403. Workers' compensation insurer requirements. (1) An insurer that provides workers' compensation insurance to a professional employer organization shall base classifications and rates applicable to the payroll of a worker who is subject to either a professional employer arrangement or an employee leasing arrangement as though the worker has been a direct employee of the client employer. If an experience modification has been established for the client employer, that experience modification must be audited using the factors in subsection (3) and must be applied by the insurer to the premium for the client employer's workers.

(2) The insurer of a professional employer organization shall report to the workers' compensation advisory or rating organization of which the insurer is required to be a member under Title 33, chapter 16, part 10, all data by client, including payroll by classification and liabilities for each client during the term of the policy.

(3) An insurer shall audit policies issued to a professional employer organization within 90 days of the policy effective date and may conduct quarterly audits thereafter. The purpose of the audit is to determine whether

all classifications, experience modification factors, and estimated payroll used with respect to the development of the premium charged are appropriate.

(4) All operations of a client, whether or not all or a portion of the client's operations are subject to a professional employer arrangement or employee leasing arrangement, must be insured by the same insurer.

History: En. Sec. 17, Ch. 344, L. 1995.

CHAPTER 9

CONTRACTOR REGISTRATION

Part 1 — General Provisions

39-9-101. Purpose.
39-9-102. Definitions.
39-9-103. Rulemaking authority.

Part 2 — Registration

39-9-201. Registration required — application.
39-9-202. Repealed.
39-9-203. Repealed.
39-9-204. Certificate of registration — issuance — duration .
39-9-205. When partnership or joint venture considered registered.
39-9-206. Fees — education program.
39-9-207. Contractor registration — limiting liability.
39-9-208 through 39-9-210 reserved.
39-9-211. Exemptions.

Part 3 — Business Practices

39-9-301. Business practices — penalty.
39-9-302. Repealed.
39-9-303. Department to compile and update list of registered construction contractors — availability — fee.
39-9-304. Provisions exclusive — certain local authority not limited or abridged.

Part 4 — Infractions—Penalties

39-9-401. Violation — infraction — penalty — disposition.
39-9-402 through 39-9-410. Repealed.

Part 1

General Provisions

Part Cross-References

Independent contractor defined, 39-71-120.

39-9-101. Purpose. It is the purpose of this chapter to ensure that all construction contractors are competing fairly and in compliance with state laws.

History: En. Sec. 1, Ch. 500, L. 1995; amd. Sec. 1, Ch. 548, L. 1997.

39-9-102. Definitions. As used in this chapter, the following definitions apply:

(1) "Construction contractor" means a person, firm, or corporation that:

(a) in the pursuit of an independent business, offers to undertake, undertakes, or submits a bid to construct, alter, repair, add to, subtract from, improve, move, wreck, or demolish for another a building, highway, road, railroad, excavation, or other structure, project, development, or improvement attached to real estate, including the installation of carpeting or other floor covering, the erection of scaffolding or other structures or works, or the installation or repair of roofing or siding; or

(b) in order to do work similar to that described in subsection (1)(a) upon the construction contractor's property, employs members of more than one trade on a single job or under a single building permit, except as otherwise provided.

(2) "Department" means the department of labor and industry.

History: En. Sec. 2, Ch. 500, L. 1995; amd. Sec. 2, Ch. 548, L. 1997.

39-9-103. Rulemaking authority. The department may adopt rules to implement this chapter.

History: En. Sec. 25, Ch. 500, L. 1995.

Part 2
Registration

39-9-201. Registration required — application. (1) Each construction contractor shall register with the department.

(2) An applicant for registration as a construction contractor shall submit an application under oath on a form to be provided by the department that must include the following information:

(a) the applicant's social security number;

(b) proof of compliance with workers' compensation laws;

(c) the I.R.S. employer identification number, if any; and

(d) the name and address of:

(i) each partner if the applicant is a firm or partnership;

(ii) the owner if the applicant is an individual proprietorship;

(iii) the corporate officers and registered agent if the applicant is a corporation; or

(iv) the manager of a manager-managed limited liability company or the members of a member-managed limited liability company and the registered agent if the applicant is a limited liability company.

History: En. Sec. 3, Ch. 500, L. 1995; amd. Sec. 3, Ch. 548, L. 1997.

39-9-202. Repealed. Sec. 14, Ch. 548, L. 1997.

History: En. Sec. 4, Ch. 500, L. 1995.

39-9-203. Repealed. Sec. 14, Ch. 548, L. 1997.

History: En. Sec. 5, Ch. 500, L. 1995.

39-9-204. Certificate of registration — issuance — duration. (1) The department shall issue to the applicant a certificate of registration upon compliance with the registration requirements of this chapter.

(2) The department shall place the expiration date on the certificate. The certificate is valid for 2 years.

History: En. Sec. 6, Ch. 500, L. 1995; amd. Sec. 4, Ch. 548, L. 1997.

39-9-205. When partnership or joint venture considered registered. A partnership or joint venture is considered registered under this chapter if one of the general partners or venturers whose name under which the partnership or venture does business is registered.

History: En. Sec. 7, Ch. 500, L. 1995.

39-9-206. Fees — education program. (1) The department shall charge fees for:

(a) issuance, renewal, and reinstatement of certificates of registration; and

(b) changes of name, address, or business structure.

(2) The department shall set the fees by administrative rule. The fees shall cover the full cost of issuing certificates, filing papers and notices, and administering and enforcing this chapter. The costs include reproduction, travel, per diem, and administrative and legal support costs.

(3) The fees charged in subsection (1)(a) may not exceed:

(a) $70 for the initial registration certificate; or

(b) $70 for the renewal or reinstatement of a registration certificate.

(4) The fees collected under this section must be deposited in the state special revenue account to the credit of the department for the administration and enforcement of this chapter.

(5) The department shall establish, cooperatively with representatives of the building industry, an industry and consumer information program, funded with 15% of the fees, to educate the building industry about the registration program and to educate the public regarding the hiring of building construction contractors.

(6) The fee for a joint application for a certificate of registration and an independent contractor exemption may not exceed the fee charged for a certificate of registration.

History: En. Sec. 8, Ch. 500, L. 1995; amd. Sec. 5, Ch. 548, L. 1997.

39-9-207. Contractor registration — limiting liability. A person who, pursuant to an oral or written contract, engages a construction contractor who is registered under this chapter on the date of the contract is not liable as an employer for workers' compensation coverage under 39-71-405, for unemployment insurance coverage, or for wages and fringe benefits for:

(1) the registered construction contractor;

(2) the employees of the registered construction contractor; or

(3) any subsequent subcontractor or the employees of any subsequent subcontractor engaged to fulfill a part of or all of the obligations of the oral or written contract of the registered construction contractor listed in subsection (1).

History: En. Sec. 9, Ch. 500, L. 1995; amd. Sec. 6, Ch. 548, L. 1997.

39-9-208 through 39-9-210 reserved.

39-9-211. Exemptions. This chapter does not apply:

(1) to an authorized representative of the United States government, the state of Montana, or any incorporated municipality, county, alternative form of local government, irrigation district, reclamation district, or other municipal or political corporation or subdivision of this state;

(2) to an officer of a court acting within the scope of office;

(3) to a public utility operating under the regulations of the public service commission or to a rural cooperative utility operating under Title 35, chapter 18, in construction, maintenance, or development work incidental to its own business;

(4) to the repair or operation incidental to the discovery or production of oil or gas or incidental to the drilling, testing, abandoning, or other operation of an oil or gas well or a surface or underground mine or mineral deposit;

(5) to the sale or installation of finished products, materials, or articles of merchandise that are not actually fabricated into and do not become a permanent fixed part of a structure;

(6) to the construction, alteration, improvement, or repair carried on within the limits and boundaries of a site or reservation under the exclusive legal jurisdiction of the federal government;

(7) to a person who only furnished materials, supplies, or equipment without fabricating them into or consuming them in the performance of the work of the construction contractor;

(8) to work or operation on one undertaking or project considered of a casual, minor, or inconsequential nature, by one or more contracts, the aggregate contract price of which, for labor and materials and all other items, is less than $2,500 a job. The exemption prescribed in this subsection does not apply when the work or construction is only a part of a larger or major operation, whether undertaken by the same or a different construction contractor, or in which a division of the operation is made into contracts of amounts of less than $2,500 a job for the purpose of evasion of this chapter or otherwise.

(9) to a farmer or rancher while engaged in a farming, dairying, agriculture, viticulture, horticulture, or stock or poultry operation;

(10) to an irrigation district or reclamation district;

(11) to an operation related to clearing or other work upon land in rural districts for fire prevention purposes;

(12) to an owner who contracts for work to be performed by a registered construction contractor, but this exemption does not apply to an owner who is otherwise covered by this chapter who constructs a residence on the owner's property with the intention and for the purpose of promptly selling the improved property;

(13) to an owner working on the owner's property, whether occupied by the owner or not, but this exemption does not apply to an owner who is otherwise covered by this chapter who constructs an improvement on the owner's property with the intention and for the purpose of promptly selling the improved property, unless the owner has continuously occupied the property as the owner's primary residence for at least the last 12 months;

(14) to owners of commercial properties who use their own employees to do maintenance, repair, and alteration work in or upon their own properties;

(15) to an architect, civil or professional engineer, or professional land surveyor, licensed in Montana and acting solely in a professional capacity;

(16) to an electrician or plumber, licensed in Montana, operating within the scope of the license;

(17) to a contract security company, licensed under Title 37, chapter 60, operating within the scope of the license;

(18) to a person who engages in the activities regulated as an employee of a registered construction contractor with wages as the sole compensation or as an employee with wages as the sole compensation;

(19) to a person or entity licensed under Title 50, chapter 39, to sell, install, or service fire suppression or fire protection equipment;

(20) to a water well contractor licensed under Title 37, chapter 43, performing the work of a water well contractor;

(21) to an enrolled tribal member or an association, business, corporation, or other entity, at least 51% of which is owned by an enrolled tribal member or members and whose business is conducted solely within the exterior boundaries of an Indian reservation;

(22) to a contractor engaged in the logging industry who builds forest access roads for the purpose of harvesting and transporting logs from forest to mill;

(23) to a person working on the person's own residence, if the residence is owned by a person other than the resident; or

(24) to an independent contractor who has no employees. However, an independent contractor may voluntarily elect to register under this chapter.

History: En. Sec. 10, Ch. 500, L. 1995; amd. Sec. 7, Ch. 548, L. 1997.

Part 3

Business Practices

39-9-301. Business practices — penalty. (1) Except as provided in 39-9-205, a person who has registered under one name as provided in this chapter may not engage in the business or act in the capacity of a construction contractor under any other name unless that name also is registered under this chapter.

(2) A construction contractor may not falsify a registration number and use it in connection with a solicitation or identification as a construction contractor. An individual construction contractor, partner, associate, agent, salesperson, solicitor, officer, or employee of a construction contractor shall use a true name and address at all times while engaged in the business or capacity of a construction contractor or in activities related to a construction contractor.

(3) (a) The finding of a violation of this section by the department at a hearing held in accordance with the Montana Administrative Procedure Act subjects the person who commits the violation to a penalty of not more than $5,000, as determined by the department. The required hearing may be held by telephone or by videoconference. A penalty collected under this section must be deposited in the state special revenue account to the credit of the department for administration and enforcement of this chapter.

(b) Penalties under this section do not apply to a violation that is determined to be an inadvertent error.

History: En. Sec. 11, Ch. 500, L. 1995; amd. Sec. 8, Ch. 548, L. 1997.

39-9-302. Repealed. Sec. 14, Ch. 548, L. 1997.

History: En. Sec. 12, Ch. 500, L. 1995.

39-9-303. Department to compile and update list of registered construction contractors — availability — fee. (1) The department shall compile a list of all construction contractors registered under this chapter and update the list at least bimonthly. The list is public information and must be available to the public upon request for a reasonable fee.

(2) The department shall inform a person, firm, or corporation whether a construction contractor is registered. The department shall provide the information without charge, except for a reasonable fee for any copies made.

History: En. Sec. 13, Ch. 500, L. 1995; amd. Sec. 9, Ch. 548, L. 1997.

39-9-304. Provisions exclusive — certain local authority not limited or abridged. The provisions of this chapter relating to the registration or licensing of a person, firm, or corporation, including the requirement of a bond with the state of Montana named as obligee and the collection of a fee, are exclusive. A political subdivision of the state may not require or issue any registrations, licenses, or bonds for the same or a similar purpose. However, this section does not limit or abridge the authority of a local government to levy and collect a general and nondiscriminatory license fee levied upon all businesses. This section does not limit the authority of a local government with respect to contractors not required to be registered under this chapter.

History: En. Sec. 14, Ch. 500, L. 1995.

Part 4
Infractions — Penalties

39-9-401. Violation — infraction — penalty — disposition. (1) It is a violation of this chapter and an infraction for any construction contractor to:

(a) perform work as a construction contractor without being registered as required by this chapter;

(b) perform work as a construction contractor when the construction contractor's registration is suspended; or

(c) transfer a valid registration to an unregistered construction contractor or allow an unregistered construction contractor to work under a registration issued to another construction contractor.

(2) (a) A determination by the department of a violation of this section subjects the person who commits the violation to a penalty of up to $500, as determined by the department. A person who has been determined to have violated this section may request that a hearing be held in accordance with the Montana Administrative Procedure Act. The hearing may be held by telephone or video conference. An appeal of the hearing decision must be made in the same manner as prescribed in 39-51-2403.

(b) A penalty under this section does not apply to a violation that is determined to be an inadvertent error.

(c) A penalty collected under this section must be deposited in the uninsured employers' fund established in 39-71-503.

History: En. Sec. 15, Ch. 500, L. 1995; amd. Sec. 10, Ch. 548, L. 1997; amd. Sec. 1, Ch. 377, L. 1999; amd. Sec. 6, Ch. 442, L. 1999.

Compiler's Comments

1999 Amendments — Composite Section: Chapter 377 at end of (2)(c) substituted "39-71-503" for "39-71-502". Amendment effective July 1, 1999.

Chapter 442 at end of (2)(a) deleted "and 39-51-2404". Amendment effective April 23, 1999.

39-9-402 through 39-9-410. Repealed. Sec. 14, Ch. 548, L. 1997.

Compiler's Comments

Histories of Repealed Sections:

39-9-402. En. Sec. 16, Ch. 500, L. 1995.

39-3-403. En. Sec. 5, Ch. 417, L. 1971; R.C.M. 1947, 41-2305; amd. Sec. 8, Ch. 90, L. 1995.

39-9-404. En. Sec. 18, Ch. 500, L. 1995.

39-9-405. En. Sec. 19, Ch. 500, L. 1995.

39-9-406. En. Sec. 20, Ch. 500, L. 1995.

39-9-407. En. Sec. 21, Ch. 500, L. 1995.

39-9-408. En. Sec. 22, Ch. 500, L. 1995.

39-9-409. En. Sec. 23, Ch. 500, L. 1995.

39-9-410. En. Sec. 24, Ch. 500, L. 1995.

CHAPTERS 10 THROUGH 28

RESERVED

CHAPTER 29

VETERANS' PUBLIC EMPLOYMENT PREFERENCE

Part 1 — General Provisions

39-29-101. Definitions.
39-29-102. Point preference or alternative preference in initial hiring for certain applicants — substantially equivalent selection procedure.
39-29-103. Notice and claim of preference.
39-29-104. Enforcement of preference.
39-29-105 through 39-29-110 reserved.
39-29-111. Retention during reduction in force.
39-29-112. Adoption of rules.

Chapter Cross-References

Legislative grants of special considerations to veterans, Art. II, sec. 35, Mont. Const.

Reemployment of veteran on completion of service, Title 10, ch. 2, part 2.

Part 1

General Provisions

39-29-101. Definitions. For the purposes of this chapter, the following definitions apply:

(1) "Active duty" means full-time duty with military pay and allowances in the armed forces, except for training, determining physical fitness, or service in the reserve or national guard.

(2) "Armed forces" means the United States:

(a) army, navy, air force, marine corps, and coast guard; and

(b) merchant marine for service recognized by the United States department of defense as active military service for the purpose of laws administered by the department of veterans affairs.

(3) "Disabled veteran" means a person:

(a) whether or not the person is a veteran as defined in this section, who was separated under honorable conditions from active duty in the armed forces and has established the present existence of a service-connected disability or is receiving compensation, disability retirement benefits, or pension because of a law administered by the department of veterans affairs or a military department; or

(b) who has received a purple heart medal.

(4) "Eligible relative" means:

(a) the unmarried surviving spouse of a veteran or disabled veteran;

(b) the spouse of a disabled veteran who is unable to qualify for appointment to a position;

(c) the mother of a veteran who died under honorable conditions while serving in the armed forces if:

(i) the mother's spouse is totally and permanently disabled; or

(ii) the mother is the widow of the father of the veteran and has not remarried;

(d) the mother of a service-connected permanently and totally disabled veteran if:

(i) the mother's spouse is totally and permanently disabled; or

(ii) the mother is the widow of the father of the veteran and has not remarried.

(5) "Position" means a position occupied by a permanent, temporary, or seasonal employee as defined in 2-18-101 for the state or a similar permanent, temporary, or seasonal employee with a public employer other than the state. The term does not include:

(a) a state or local elected office;

(b) appointment by an elected official to a body such as a board, commission, committee, or council;

(c) appointment by an elected official to a public office if the appointment is provided for by law;

(d) a department head appointment by the governor or an executive department head appointment by a mayor, city manager, county commissioner, or other chief administrative or executive officer of a local government; or

(e) engagement as an independent contractor or employment by an independent contractor.

(6) "Public employer" means:

(a) a department, office, board, bureau, commission, agency, or other instrumentality of the executive, legislative, or judicial branches of the government of this state;

(b) a unit of the Montana university system;

(c) a school district or community college; and

(d) a county, city, or town.

(7) "Scored procedure" means a written test, structured oral interview, performance test, or other selection procedure or a combination of these procedures that results in a numerical score to which percentage points may be added.

(8) "Under honorable conditions" means a discharge or separation from active duty characterized by the armed forces as under honorable conditions. The term includes honorable discharges and general discharges but does not include dishonorable discharges or other administrative discharges characterized as other than honorable.

(9) "Veteran" means a person who:

(a) was separated under honorable conditions from active duty in the armed forces after having served more than 180 consecutive days, other than for training; or

(b) as a member of a reserve component under an order of active duty pursuant to 10 U.S.C. 12301(a), (d), or (g), 10 U.S.C. 12302, or 10 U.S.C. 12304 served on active duty during a period of war or in a campaign or expedition for which a campaign badge is authorized and was discharged or released from duty under honorable conditions.

History: En. Sec. 1, Ch. 646, L. 1989; amd. Sec. 1, Ch. 78, L. 1993; amd. Sec. 27, Ch. 308, L. 1995; amd. Sec. 162, Ch. 42, L. 1997; amd. Sec. 11, Ch. 339, L. 1997.

39-29-102. Point preference or alternative preference in initial hiring for certain applicants — substantially equivalent selection procedure. (1) Subject to the restrictions in subsections (2) and (3), whenever a public employer uses a scored procedure, an applicant for an initial hiring, as defined in 39-30-103, must have added to the applicant's score the following percentage points of the total possible points that may be granted in the scored procedure:

(a) 5 percentage points if the applicant is a veteran; and

(b) 10 percentage points if the applicant is a disabled veteran or an eligible relative.

(2) A veteran, disabled veteran, or eligible relative may not receive the percentage points provided for in subsection (1) unless the person:

(a) is a United States citizen; and

(b) meets the minimum qualifications required for the position. If no applicant meets the minimum qualifications and the public employer fills a training position, veterans' preference must be applied.

(3) A disabled veteran who receives 10 percentage points under subsection (1)(b) may not receive an additional 5 percentage points under subsection (1)(a).

(4) Whenever a public employer uses a selection procedure other than a scored procedure, the public employer shall give preference to a disabled veteran, eligible relative, or veteran, in that order, over any nonpreferred applicant holding substantially equal qualifications, as defined in 39-30-103.

History: En. Sec. 2, Ch. 646, L. 1989; amd. Sec. 1, Ch. 168, L. 1999.

Compiler's Comments

1999 Amendment: Chapter 168 in (2)(b) substituted language regarding minimum qualifications for former text that read: "(b) received 70 or more percentage points of the total possible points that may be granted in the scored procedure"; inserted (4) requiring an employer to give veteran preference when using a selection procedure other than a scored procedure; and made minor changes in style. Amendment effective October 1, 1999.

39-29-103. Notice and claim of preference. (1) A public employer shall, by posting or on the application form, give notice of the preference provided in 39-29-102.

(2) A job applicant who believes that the applicant is eligible to receive a preference shall claim the preference in writing before the time for filing applications for the position involved has passed. Failure to make a timely preference claim for a position is a complete defense to an action instituted by an applicant under 39-29-104 with regard to that position.

(3) If an applicant for a position makes a timely written preference claim, the public employer shall give written notice of its hiring decision to the applicant claiming preference.

History: En. Sec. 3, Ch. 646, L. 1989; amd. Sec. 2, Ch. 168, L. 1999.

Compiler's Comments

1999 Amendment: Chapter 168 in (1) after "notice of the" deleted "point"; in (2) near middle of first sentence after "receive a" deleted "point"; and made minor changes in style. Amendment effective October 1, 1999.

39-29-104. Enforcement of preference. (1) An applicant who believes that the applicant is entitled to but has not been given the preference provided in 39-29-102 may, within 30 days of receipt of the notice of the hiring decision provided for in 39-29-103, submit to the public employer a written request for an explanation of the public employer's hiring decision. Within 15 days of receipt of the request, the public employer shall give the applicant a written explanation.

(2) After following the procedure described in subsection (1), the applicant may, within 90 days after receipt of notice of the hiring decision, file a petition in the district court in the county in which the application was received by the public employer. The petition must state facts that on their face entitle the applicant to a preference.

(3) (a) Upon filing of the petition, the court shall order the public employer to appear in court at a specified time not less than 5 or more than 10 days after the day the petition was filed and show cause why the applicant was not hired for the position. At the hearing, the public employer has the burden of proving by a preponderance of the evidence that the public employer applied the preference under 39-29-102 and made a reasonable hiring decision. The applicant has the burden of proving by a preponderance of the evidence that the applicant is a preference-eligible applicant.

(b) The time to appear provided in subsection (3)(a) may be waived by stipulation of the parties. If a time to appear has been specified pursuant to subsection (3)(a), the court may, on motion of one of the parties or on stipulation of all of the parties, grant a continuance.

(c) If the public employer does not carry its burden of proof under subsection (3)(a) and the court finds that the applicant is a preference-eligible applicant, the court shall order the public employer to comply with the provisions of 39-29-102. In addition, the court shall, upon proper proof, grant an award of backpay, reasonable attorney fees, and costs.

(4) Failure of an applicant to file a petition under subsection (2) within 90 days bars the filing of a petition. If a public employer fails to provide an explanation under subsection (1) within 15 days and a petition is filed under subsection (2), the court shall order the public employer to comply with the provisions of 39-29-102.

(5) The Montana Rules of Civil Procedure apply to a proceeding under this section to the extent that they do not conflict with this section.

History: En. Sec. 4, Ch. 646, L. 1989; amd. Sec. 3, Ch. 168, L. 1999.

Compiler's Comments

1999 Amendment: Chapter 168 in (1) near middle of first sentence after "given the" deleted "point"; in (2) at end of second sentence before "preference" deleted "point"; in (3)(a) near middle of second sentence after "applied the" substituted "preference" for "points"; and made minor changes in style. Amendment effective October 1, 1999.

39-29-105 through 39-29-110 reserved.

39-29-111. Retention during reduction in force. (1) Subject to the restrictions in subsections (2) and (3), during a reduction in force, a public employer shall retain in a position:

(a) a veteran, disabled veteran, or eligible relative whose performance has not been rated unacceptable under a performance appraisal system over other employees with similar job duties and qualifications and same length of service; and

(b) a disabled veteran with a service-connected disability of 30% or more whose performance has not been rated unacceptable under a performance appraisal system over other veterans, disabled veterans, and eligible relatives with similar job duties and qualifications and same length of service.

(2) An employee is not entitled to preference in retention under subsection (1) unless he is a United States citizen.

(3) The preference in retention under subsection (1) does not apply to a position covered by a collective bargaining agreement.

History: En. Sec. 5, Ch. 646, L. 1989.

39-29-112. Adoption of rules. The department of administration shall adopt rules implementing this chapter. The department's rules apply to all local and state public employers.

History: En. Sec. 6, Ch. 646, L. 1989.

CHAPTER 30

PERSONS WITH DISABILITIES PUBLIC EMPLOYMENT PREFERENCE

Part 1 — General Provisions

39-30-101. Short title.
39-30-102. Purposes.
39-30-103. Definitions.
39-30-104 and 39-30-105 reserved.
39-30-106. Adoption of rules.
39-30-107. Certification of persons with disabilities.
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Part 2 — Operative Provisions

39-30-201. Employment preference in initial hiring.
39-30-202. Eligibility requirements.
39-30-203. Duration of preference.
39-30-204 and 39-30-205 reserved.
39-30-206. Notice and claim of preference.
39-30-207. Enforcement of preference.

Part 1
General Provisions

39-30-101. Short title. This chapter may be cited as the "Montana Persons With Disabilities Employment Preference Act".

History: En. Sec. 1, Ch. 1, Sp. L. 1983; amd. Sec. 8, Ch. 646, L. 1989; amd. Sec. 32, Ch. 472, L. 1997.

39-30-102. Purposes. The purposes of this chapter are to recognize past employment discrimination against persons with disabilities and to facilitate the habilitation, rehabilitation, and readjustment of persons with disabilities.

History: En. Sec. 2, Ch. 1, Sp. L. 1983; amd. Sec. 9, Ch. 646, L. 1989; amd. Sec. 33, Ch. 472, L. 1997.

39-30-103. Definitions. For the purposes of this chapter, the following definitions apply:

(1) "Eligible spouse" means the spouse of a person with a disability determined by the department of public health and human services to have a 100% disability and who is unable to use the employment preference because of the person's disability.

(2) (a) "Initial hiring" means a personnel action for which applications are solicited from outside the ranks of the current employees of:

(i) a department, as defined in 2-15-102, for a position within the executive branch;

(ii) a legislative agency for a position within the legislative branch;

(iii) a judicial agency, such as the office of supreme court administrator, office of supreme court clerk, state law library, or similar office in a state district court for a position within the judicial branch;

(iv) a city or town for a municipal position, including a city or municipal court position; and

(v) a county for a county position, including a justice's court position.

(b) A personnel action limited to current employees of a specific public entity identified in this subsection (2), current employees in a reduction-in-force pool who have been laid off from a specific public entity identified in this subsection (2), or current participants in a federally authorized employment program is not an initial hiring.

(3) (a) "Mental impairment" means:

(i) a disability attributable to mental retardation, cerebral palsy, epilepsy, autism, or any other neurologically disabling condition closely related to mental retardation and requiring treatment similar to that required by mentally retarded individuals; or

(ii) an organic or mental impairment that has substantial adverse effects on an individual's cognitive or volitional functions.

(b) The term mental impairment does not include alcoholism or drug addiction and does not include any mental impairment, disease, or defect that has been asserted by the individual claiming the preference as a defense to any criminal charge.

(4) "Person with a disability" means an individual certified by the department of public health and human services to have a physical or mental impairment that substantially limits one or more major life activities, such as writing, seeing, hearing, speaking, or mobility, and that limits the individual's ability to obtain, retain, or advance in employment.

(5) "Position" means a position occupied by a permanent or seasonal employee as defined in 2-18-101 for the state or a position occupied by a similar permanent or seasonal employee with a public employer other than the state. However, the term does not include:

(a) a position occupied by a temporary employee as defined in 2-18-101 for the state or a similar temporary employee with a public employer other than the state;

(b) a state or local elected official;

(c) employment as an elected official's immediate secretary, legal adviser, court reporter, or administrative, legislative, or other immediate or first-line aide;

(d) appointment by an elected official to a body such as a board, commission, committee, or council;

(e) appointment by an elected official to a public office if the appointment is provided for by law;

(f) a department head appointment by the governor or an executive department head appointment by a mayor, city manager, county commissioner, or other chief administrative or executive officer of a local government; or

(g) engagement as an independent contractor or employment by an independent contractor.

(6) (a) "Public employer" means:

(i) any department, office, board, bureau, commission, agency, or other instrumentality of the executive, judicial, or legislative branch of the government of the state of Montana; and

(ii) any county, city, or town.

(b) The term does not include a school district, a vocational-technical program, a community college, the board of regents of higher education, the Montana university system, a special purpose district, an authority, or any political subdivision of the state other than a county, city, or town.

(7) "Substantially equal qualifications" means the qualifications of two or more persons among whom the public employer cannot make a reasonable determination that the qualifications held by one person are significantly better suited for the position than the qualifications held by the other persons.

History: En. Sec. 3, Ch. 1, Sp. L. 1983; amd. Sec. 34, Ch. 658, L. 1987; amd. Sec. 10, Ch. 646, L. 1989; amd. Sec. 28, Ch. 308, L. 1995; amd. Sec. 62, Ch. 545, L. 1995; amd. Sec. 101, Ch. 546, L. 1995; amd. Sec. 12, Ch. 339, L. 1997; amd. Sec. 34, Ch. 472, L. 1997.

Cross-References

The judiciary, Title 3.

Legislative Branch, Title 5.

Developmentally disabled defined similarly to "mental impairment", 53-20-102.

39-30-104 and 39-30-105 reserved.

39-30-106. Adoption of rules. The department of administration shall adopt rules implementing this chapter and shall consult with the department of public health and human services in adopting rules governing certification of persons with disabilities for purposes of this chapter. The department of administration's rules apply to all public employers, local as well as state.

History: En. Sec. 9, Ch. 1, Sp. L. 1983; amd. Sec. 102, Ch. 546, L. 1995; amd. Sec. 35, Ch. 472, L. 1997.

Cross-References

Administrative rulemaking, Title 2, ch. 4, part 3.

39-30-107. Certification of persons with disabilities. The department of public health and human services shall certify persons with disabilities for the purpose of employment preference as provided in this chapter.

History: En. Sec. 6, Ch. 1, Sp. L. 1983; amd. Sec. 103, Ch. 546, L. 1995; amd. Sec. 36, Ch. 472, L. 1997.

39-30-108. No application if conflict with federal law. This chapter does not apply to work or positions subject to federal laws or regulations if application of the employment preference conflicts with those laws or regulations.

History: En. Sec. 10, Ch. 1, Sp. L. 1983.

Cross-References

Supremacy clause, Art. VI, U.S. Const. (see anno. vol. 1, Federal Materials).

Part 2
Operative Provisions

39-30-201. Employment preference in initial hiring. (1) (a) Except as provided in 10-2-402, in an initial hiring for a position, if a job applicant who is a person with a disability or eligible spouse meets the eligibility requirements contained in 39-30-202 and claims a preference as required by 39-30-206, a public employer shall hire the applicant over any other applicant with substantially equal qualifications who is not a preference-eligible applicant.

(b) In an initial hiring, a public employer shall hire a person with a disability over any other preference-eligible applicant with substantially equal qualifications.

(2) The employment preference provided for in subsection (1) does not apply to a personnel action described in 39-30-103(2)(b) or to any other personnel action that is not an initial hiring.

History: En. Sec. 4, Ch. 1, Sp. L. 1983; amd. Sec. 11, Ch. 646, L. 1989; amd. Sec. 37, Ch. 472, L. 1997.

Cross-References

Preference of Montana labor in public works, 18-2-403.

Management rights of public employers, 39-31-303.

Employment preference no violation of antidiscrimination laws, 49-2-405, 49-3-103.

39-30-202. Eligibility requirements. An eligible spouse or person with a disability is not entitled to receive employment preference as provided in 39-30-201 unless:

(1) the individual is a United States citizen;

(2) the individual has resided continuously in the state for at least 1 year immediately before applying for employment;

(3) if applying for municipal or county employment, the individual has resided for at least 30 days immediately before applying for employment in the city, town, or county in which employment is sought; and

(4) the individual meets those requirements considered necessary by a public employer to successfully perform the essential duties of the position for which the individual is applying.

History: En. Sec. 5, Ch. 1, Sp. L. 1983; amd. Sec. 12, Ch. 646, L. 1989; amd. Sec. 38, Ch. 472, L. 1997.

Cross-References

Rules for determining residence, 1-1-215.

39-30-203. Duration of preference. Subject to 39-30-202, a person with a disability or eligible spouse qualifies for employment preference as long as the disabling condition exists.

History: En. Sec. 7, Ch. 1, Sp. L. 1983; amd. Sec. 13, Ch. 646, L. 1989; amd. Sec. 39, Ch. 472, L. 1997.

39-30-204 and 39-30-205 reserved.

39-30-206. Notice and claim of preference. (1) A public employer shall, by posting or on the application form, give notice of the preferences that this chapter provides in public employment.

(2) A job applicant who believes he has an employment preference shall claim the preference in writing before the time for filing applications for the position involved has passed. Failure to make a timely employment preference claim for a position is a complete defense to an action in regard to that position under 39-30-207.

(3) If an applicant for a position makes a timely written employment preference claim, the public employer shall give written notice of its hiring decision to each applicant claiming preference.

History: En. Sec. 8(1)-(3), Ch. 1, Sp. L. 1983.

39-30-207. Enforcement of preference. (1) An applicant who believes he has not been accorded his rights under this chapter may, within 30 days of receipt of the notice of the hiring decision provided for in 39-30-206, submit to the public employer a written request for an explanation of the public employer's hiring decision. Within 15 days of receipt of the request, the public employer shall give the applicant a written explanation.

(2) The applicant may, within 90 days after receipt of notice of the hiring decision, file a petition in the district court in the county in which his application was received by the public employer. The petition must state facts that on their face entitle the applicant to an employment preference.

(3) (a) Upon filing of the petition, the court shall order the public employer to appear in court at a specified time not less than 10 or more than 30 days after the day the petition was filed and show cause why the applicant was not hired for the position. At the hearing, the public employer has the burden of proving by a preponderance of the evidence that the employer made a reasonable determination pursuant to 39-30-103(7), and the applicant has the burden of proving by a preponderance of the evidence that he is a preference-eligible applicant.

(b) The time to appear provided in subsection (3)(a) may be waived by stipulation of the parties. If a time to appear has been specified pursuant to subsection (3)(a), the court may, on motion of one of the parties or on stipulation of all of the parties, grant a continuance.

(c) If the public employer does not carry its burden of proof under subsection (3)(a) and the court finds that the applicant is a preference-eligible applicant, the court shall order the public employer to reopen the selection process for the position involved and shall grant the applicant reasonable attorney fees and court costs. The remedy provided by this section is the only remedy for a violation of this chapter, and a court may not grant any other relief in an action for violation of this chapter.

(4) Failure of an applicant to file a petition under subsection (2) within 90 days bars the filing of a petition. If a public employer fails to provide an explanation under subsection (1) within 15 days and a petition is filed under subsection (2), the court shall order the public employer to reopen the selection process.

(5) The Montana Rules of Civil Procedure apply to a proceeding under this section to the extent that they do not conflict with this section.

History: En. Sec. 8(4), Ch. 1, Sp. L. 1983; amd. Sec. 14, Ch. 646, L. 1989.

Cross-References

Montana Rules of Civil Procedure, Title 25, ch. 20.

Evidence, Title 26.

CHAPTER 31

COLLECTIVE BARGAINING FOR PUBLIC EMPLOYEES

Part 1 — General Provisions

39-31-101. Policy.
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39-31-103. Definitions.
39-31-104. Rules.
39-31-105. Administrative procedure act applicable — conduct of hearing.
39-31-106. Board authorized to subpoena witnesses and administer oaths.
39-31-107. Service of subpoenas, notices of hearing, and other process.
39-31-108. Counsel for public parties to litigation.
39-31-109. Existing collective bargaining agreements not affected.

Part 2 — Public Employee Self-Organization and Certification of Bargaining Representative

39-31-201. Public employees protected in right of self-organization.
39-31-202. Board to determine appropriate bargaining unit — factors to be considered.
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39-31-401. Unfair labor practices of public employer.
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39-31-403. Remedies for unfair labor practices.
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39-31-406. Hearing on complaint — findings — order.
39-31-407. Amendment of complaint.
39-31-408. Modification by board of findings and order.
39-31-409. Court enforcement and review of board order.

Part 1
General Provisions

39-31-101. Policy. In order to promote public business by removing certain recognized sources of strife and unrest, it is the policy of the state of Montana to encourage the practice and procedure of collective bargaining to arrive at friendly adjustment of all disputes between public employers and their employees.

History: En. Sec. 1, Ch. 441, L. 1973; R.C.M. 1947, 59-1601.

39-31-102. Chapter not a limit on legislative authority. This chapter does not limit the authority of the legislature, any political subdivision, or the governing body relative to appropriations for salary and wages, hours, fringe benefits, and other conditions of employment.

History: En. Sec. 5, Ch. 441, L. 1973; amd. Sec. 1, Ch. 36, L. 1975; amd. Sec. 1, Ch. 97, L. 1975; amd. Sec. 2, Ch. 384, L. 1975; R.C.M. 1947, 59-1605(5).

39-31-103. Definitions. When used in this chapter, the following definitions apply:

(1) "Appropriate unit" means a group of public employees banded together for collective bargaining purposes as designated by the board.

(2) "Board" means the board of personnel appeals provided for in 2-15-1705.

(3) "Confidential employee" means any person found by the board to be a confidential labor relations employee and any person employed in the personnel division, department of administration, who acts with discretionary authority in the creation or revision of state classification specifications.

(4) "Exclusive representative" means the labor organization which has been designated by the board as the exclusive representative of employees in an appropriate unit or has been so recognized by the public employer.

(5) "Labor dispute" includes any controversy concerning terms, tenure, or conditions of employment or concerning the association or representation of persons in negotiating, fixing, maintaining, changing, or seeking to arrange terms or conditions of employment, regardless of whether the disputants stand in the proximate relation of employer and employee.

(6) "Labor organization" means any organization or association of any kind in which employees participate and which exists for the primary purpose of dealing with employers concerning grievances, labor disputes, wages, rates

of pay, hours of employment, fringe benefits, or other conditions of employment.

(7) "Management official" means a representative of management having authority to act for the agency on any matters relating to the implementation of agency policy.

(8) "Person" includes one or more individuals, labor organizations, public employees, associations, corporations, legal representatives, trustees, trustees in bankruptcy, or receivers.

(9) (a) "Public employee" means:

(i) except as provided in subsection (9)(b), a person employed by a public employer in any capacity; and

(ii) an individual whose work has ceased as a consequence of or in connection with any unfair labor practice or concerted employee action.

(b) Public employee does not mean:

(i) an elected official;

(ii) a person directly appointed by the governor;

(iii) a supervisory employee, as defined in subsection (11);

(iv) a management official, as defined in subsection (7);

(v) a confidential employee, as defined in subsection (3);

(vi) a member of any state board or commission who serves the state intermittently;

(vii) a school district clerk;

(viii) a school administrator;

(ix) a registered professional nurse performing service for a health care facility;

(x) a professional engineer; or

(xi) an engineer intern.

(10) "Public employer" means the state of Montana or any political subdivision thereof, including but not limited to any town, city, county, district, school board, board of regents, public and quasi-public corporation, housing authority or other authority established by law, and any representative or agent designated by the public employer to act in its interest in dealing with public employees. Public employer also includes any local public agency designated as a head start agency as provided in 42 U.S.C. 9836.

(11) "Supervisory employee" means any individual having authority in the interest of the employer to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, discipline other employees, having responsibility to direct them, to adjust their grievances, or effectively to recommend such action, if in connection with the foregoing the exercise of such authority is not of a merely routine or clerical nature but requires the use of independent judgment.

(12) "Unfair labor practice" means any unfair labor practice listed in 39-31-401 or 39-31-402.

History: En. Sec. 2, Ch. 441, L. 1973; amd. Sec. 1, Ch. 117, L. 1975; amd. Sec. 1, Ch. 384, L. 1975; R.C.M. 1947, 59-1602(part); amd. Sec. 1, Ch. 271, L. 1979; amd. Sec. 31, Ch. 397, L. 1979; amd. Sec. 1, Ch. 354, L. 1987; amd. Sec. 14, Ch. 108, L. 1995.

39-31-104. Rules. The board shall adopt, amend, or rescind such rules it considers necessary and administratively feasible to carry out the provisions of this chapter.

History: En. Sec. 13, Ch. 441, L. 1973; R.C.M. 1947, 59-1613(4).

Cross-References

Administrative rulemaking procedure, Title 2, ch. 4, parts 1 through 3.

39-31-105. Administrative procedure act applicable — conduct of hearing. All hearings and appeals must be in accordance with the appropriate provisions of the Montana Administrative Procedure Act. Hearings and appeals may be conducted by telephone or by videoconference, with the consent of the necessary parties.

History: En. Sec. 17, Ch. 441, L. 1973; R.C.M. 1947, 59-1616; amd. Sec. 9, Ch. 90, L. 1995.

Cross-References

Montana Administrative Procedure Act, Title 2, ch. 4.

39-31-106. Board authorized to subpoena witnesses and administer oaths. (1) To accomplish the objectives and to carry out the duties prescribed by this chapter, the board may subpoena witnesses and may administer oaths and affirmations.

(2) In cases of neglect or refusal to obey a subpoena issued to any person, the district court of the county in which the investigations or the public hearings are taking place or the district court of the first judicial district of this state, upon application by the board, may issue an order requiring such person to appear before the board or agent to produce evidence or give testimony about the matter under investigation. Failure to obey such order may be punished by the court as contempt.

History: En. Sec. 13, Ch. 441, L. 1973; R.C.M. 1947, 59-1613(1), (2).

Cross-References

Contempts, Title 3, ch. 1, part 5.

Subpoena, Rule 45, M.R.Civ.P. (see Title 25, ch. 20).

39-31-107. Service of subpoenas, notices of hearing, and other process. Any subpoena, notice of hearing, or other process or notice of the board issued under the provisions of this chapter shall be served as provided by the rules of civil procedure.

History: En. Sec. 13, Ch. 441, L. 1973; R.C.M. 1947, 59-1613(3).

Cross-References

Montana Rules of Civil Procedure, Title 25, ch. 20.

39-31-108. Counsel for public parties to litigation. In any action brought under the provisions of this chapter in the courts of this state, the public employer shall be represented by the attorney general or attorney of subdivision and the board shall be represented by counsel hired to represent the board for purposes of that proceeding.

History: En. Sec. 11, Ch. 441, L. 1973; R.C.M. 1947, 59-1611.

39-31-109. Existing collective bargaining agreements not affected. Nothing in this chapter shall be construed to remove recognition of established collective bargaining agreements already recognized or in existence prior to July 1, 1973.

History: En. Sec. 16, Ch. 441, L. 1973; R.C.M. 1947, 59-1615.

Part 2

Public Employee Self-Organization and Certification of Bargaining Representative

Part Cross-References

Freedom of religion, Art. II, sec. 5, Mont. Const.

Appropriate unit defined, 39-31-103.

Board defined, 39-31-103.

Labor organization defined, 39-31-103.

Public employee defined, 39-31-103.

Public employer defined, 39-31-103.

39-31-201. Public employees protected in right of self-organization. Public employees shall have and shall be protected in the exercise of the right of self-organization, to form, join, or assist any labor organization, to bargain collectively through representatives of their own choosing on questions of wages, hours, fringe benefits, and other conditions of employment, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection free from interference, restraint, or coercion.

History: En. Sec. 3, Ch. 441, L. 1973; amd. Sec. 1, Ch. 244, L. 1974; R.C.M. 1947, 59-1603(1).

39-31-202. Board to determine appropriate bargaining unit — factors to be considered. (1) In order to ensure employees the fullest freedom in exercising the rights guaranteed by this chapter, the board or an agent of the board shall decide the unit appropriate for the purpose of collective bargaining and shall consider such factors as community of interest, wages, hours, fringe benefits, and other working conditions of the employees involved, the history of collective bargaining, common supervision, common personnel policies, extent of integration of work functions and interchange among employees affected, and the desires of the employees.

(2) If a state agency or facility of a state agency is reorganized to the extent that the reorganization results in substantial changes to the factors listed in subsection (1), the public employer representative, as provided in 39-31-301, may petition the board to make a new determination of the appropriate unit for the purpose of collective bargaining. In making this determination, the board shall take into account the consequences of the reorganization on each position in the affected agency or facility.

(3) Unless the board has received a petition, as provided in 39-31-207, to consider a collective bargaining unit that was not designated as an appropriate unit prior to the reorganization described in subsection (2), the board may not consider any labor organization that was not designated to represent employees of the affected agency or facility at the time that the reorganization became effective.

History: En. Sec. 6, Ch. 441, L. 1973; amd. Sec. 1, Ch. 136, L. 1975; R.C.M. 1947, 59-1606(2); amd. Sec. 1, Ch. 176, L. 1999.

Compiler's Comments

1999 Amendment: Chapter 176 inserted (2) providing that the public employer representative may petition the board to make a new determination of the appropriate collective bargaining unit in certain cases of reorganization of a state agency or facility; inserted (3) prohibiting the board with respect to a reorganization from considering a labor organization as a collective bargaining unit without the filing of a petition; and made minor changes in style. Amendment effective March 25, 1999.

39-31-203. Deduction of dues from employee's pay. Upon written authorization of any public employee within a bargaining unit, the public employer shall deduct from the pay of the public employee the monthly amount of dues as certified by the secretary of the exclusive representative and shall deliver the dues to the treasurer of the exclusive representative.

History: En. Sec. 12, Ch. 441, L. 1973; R.C.M. 1947, 59-1612.

39-31-204. Right of nonassociation with labor organization on religious grounds — requirements and procedure for assertion of right. (1) No public employee who is a member of a bona fide religious sect or division thereof, the established and traditional tenets or teachings of which oppose a requirement that a member of such sect or division join or financially support a particular or any labor organization, may be required to join or financially support that particular labor organization or any labor organization if the tenets or teachings oppose a requirement that any labor organization be joined or supported as a condition of employment if such public employee pays in lieu of periodic union dues, initiation fees, and assessments, at the same time or times such periodic union dues, initiation fees, and assessments would otherwise be payable, a sum of money equivalent to such periodic union dues, initiation fees, and assessments to a nonreligious, nonunion charity designated by the labor organization. Such public employee shall furnish to such labor organization written receipts evidencing such payments, and failure to make such payments or furnish such receipts shall subject the employee to the same sanctions as would nonpayment of dues, initiation fees, or assessments under the applicable collective bargaining agreement.

(2) A public employee desiring to avail himself or herself to the right of nonassociation with a labor organization as provided in this section shall make written application to the chairman of the board of personnel appeals. Within 10 days of the date of receipt of such application, the chairman shall appoint a committee of three, consisting of a clergyman not connected with the sect in question, a labor union official not directly connected with the labor organization in question, and a member of the public at large who shall be the chairman. The committee shall within 10 days of the date of its appointment meet at the locale of either the employee's residence or place of employment and, after receiving written or oral presentations from all interested parties, determine by a majority vote whether or not such public employee qualifies for the right of nonassociation with such labor organization. The committee's decision shall be made in writing within 3 days of the meeting date, and a copy thereof shall be forthwith mailed to such public employee, labor organization, and the chairman of the board of personnel appeals.

History: En. Sec. 3, Ch. 441, L. 1973; amd. Sec. 1, Ch. 244, L. 1974; R.C.M. 1947, 59-1603(5); amd. Sec. 1, Ch. 237, L. 1985.

39-31-205. Designated labor organizations to represent employees without discrimination. Labor organizations designated in accordance with the provisions of this chapter are responsible for representing the interest of all employees in the exclusive bargaining unit without discrimination for the purposes of collective bargaining with respect to rates of pay, hours, fringe benefits, and other conditions of employment.

History: En. Sec. 3, Ch. 441, L. 1973; amd. Sec. 1, Ch. 244, L. 1974; R.C.M. 1947, 59-1603(3).

39-31-206. Labor organization to guarantee certain rights and safeguards prior to certification or recognition. (1) Certification or recognition as an exclusive representative shall be extended or continued, as the case may be, only to a labor or employee organization the written bylaws of which provide for and guarantee the following rights and safeguards and whose practices conform to such rights and safeguards as:

(a) provisions are made for democratic organization and procedures;

(b) elections are conducted pursuant to adequate standards and safeguards;

(c) controls are provided for the regulation of officers and agents having fiduciary responsibility to the organization; and

(d) requirements exist for maintenance of sound accounting and fiscal controls, including annual audits.

(2) The board shall hear and decide all disputes arising under subsection (1).

History: En. Sec. 3, Ch. 441, L. 1973; amd. Sec. 1, Ch. 244, L. 1974; R.C.M. 1947, 59-1603(4); amd. Sec. 1, Ch. 18, L. 1985.

39-31-207. Petition on representation question — investigation by board — hearing. (1) The board or an agent of the board shall investigate the petition and, if it has reasonable cause to believe that a question of representation exists, it shall provide for an appropriate hearing upon due notice whenever, in accordance with such rules as may be prescribed by the board, a petition has been filed:

(a) by an employee or group of employees or any labor organization acting in their behalf alleging that 30% of the employees:

(i) wish to be represented for collective bargaining by a labor organization as exclusive representative; or

(ii) assert that the labor organization which has been certified or is currently being recognized by the public employer as bargaining representative is no longer the representative of the majority of employees in the unit; or

(b) by the public employer alleging that one or more labor organizations have presented to it a claim to be recognized as the exclusive representative in an appropriate unit.

(2) In this hearing, the board is not bound by common law and statutory rules of evidence.

History: En. Sec. 6, Ch. 441, L. 1973; amd. Sec. 1, Ch. 136, L. 1975; R.C.M. 1947, 59-1606(part).

39-31-208. Representation election at direction of board. (1) If the board or an agent of the board, in the hearing provided for in 39-31-207, finds that there is a question of representation, it shall direct an election by secret ballot to determine whether and by which labor organization the employees desire to be represented or whether they desire to have no labor organization represent them and shall certify the results thereof.

(2) Only those labor organizations which have been designated by more than 10% of the employees in the unit found to be appropriate shall be placed on the ballot.

(3) The board or an agent of the board shall determine who is eligible to vote in the election and shall establish rules governing the election.

(4) Unless the majority vote is for no representation by a labor organization and in any election where none of the choices for a representative on the ballot receives a majority, a runoff election shall be conducted, the ballot providing for selection between the two choices receiving the largest and the second largest number of valid votes cast in the election.

(5) A labor organization which receives the majority of the votes cast in an election shall be certified by the board as the exclusive representative.

History: En. Sec. 6, Ch. 441, L. 1973; amd. Sec. 1, Ch. 136, L. 1975; R.C.M. 1947, 59-1606(part); amd. Sec. 32, Ch. 397, L. 1979.

39-31-209. Consent election. Nothing in 39-31-207 or 39-31-208 prohibits the waiving of hearings by stipulation for the purpose of a consent election in conformity with the rules of the board.

History: En. Sec. 6, Ch. 441, L. 1973; amd. Sec. 1, Ch. 136, L. 1975; R.C.M. 1947, 59-1606(part).

39-31-210. Election in twelve-month period following valid election prohibited. An election shall not be directed in any bargaining unit or in any subdivision thereof within which in the preceding 12-month period a valid election has been held.

History: En. Sec. 6, Ch. 441, L. 1973; amd. Sec. 1, Ch. 136, L. 1975; R.C.M. 1947, 59-1606(part).

39-31-211. Labor organizations representing employees of the board to be unaffiliated. A labor organization representing employees of the board may not affiliate or associate itself with a labor organization that represents any employees other than employees of the board. The board may not certify a labor organization as the exclusive representative of the employees of the board if, at the time of certification or thereafter, the labor organization is associated or affiliated with a labor organization that represents employees other than employees of the board.

History: En Sec. 2, Ch. 271, L. 1979.

Part 3

Bargaining

Part Cross-References

Reduction in force — severance pay and retraining allowance required, 2-18-622.

Contributions, 2-18-703.

Veterans' public employment preference, Title 39, ch. 29.

Persons with disabilities public employment preference, Title 39, ch. 30.

Board defined, 39-31-103.

Public employer defined, 39-31-103.

39-31-301. Representative of public employer. The chief executive officer of the state, the governing body of a political subdivision, the commissioner of higher education, whether elected or appointed, or the designated authorized representative shall represent the public employer in collective bargaining with an exclusive representative.

History: En. Sec. 9, Ch. 441, L. 1973; amd. Sec. 3, Ch. 313, L. 1974; amd. Sec. 1, Ch. 35, L. 1975; R.C.M. 1947, 59-1609.

39-31-302. Participation by student representative when public employer is board of regents. When the board of regents is the public employer defined in 39-31-103, the student government at an institution of higher education may designate an agent or representative to meet and confer with the board of regents and the faculty bargaining agent prior to negotiations with the professional educational employees, to observe those negotiations and participate in caucuses as part of the public employer's bargaining team, and to meet and confer with the board of regents regarding the terms of agreement prior to the execution of a written contract between the regents and the professional educational employees. The student observer is obliged to maintain the confidentiality of these negotiations.

History: En. Sec. 2, Ch. 441, L. 1973; amd. Sec. 1, Ch. 117, L. 1975; amd. Sec. 1, Ch. 384, L. 1975; R.C.M. 1947, 59-1602(part).

39-31-303. Management rights of public employers. Public employees and their representatives shall recognize the prerogatives of public employers to operate and manage their affairs in such areas as, but not limited to:

(1) direct employees;

(2) hire, promote, transfer, assign, and retain employees;

(3) relieve employees from duties because of lack of work or funds or under conditions where continuation of such work be inefficient and nonproductive;

(4) maintain the efficiency of government operations;

(5) determine the methods, means, job classifications, and personnel by which government operations are to be conducted;

(6) take whatever actions may be necessary to carry out the missions of the agency in situations of emergency;

(7) establish the methods and processes by which work is performed.

History: En. Sec. 3, Ch. 441, L. 1973; amd. Sec. 1, Ch. 244, L. 1974; R.C.M. 1947, 59-1603(2).

39-31-304. Negotiable items for school districts. Nothing in this chapter shall require or allow boards of trustees of school districts to bargain collectively upon any matter other than matters specified in 39-31-305(2).

History: En. Sec. 2, Ch. 117, L. 1975; R.C.M. 1947, 59-1617.

39-31-305. Duty to bargain collectively — good faith. (1) The public employer and the exclusive representative, through appropriate officials or their representatives, shall have the authority and the duty to bargain collectively. This duty extends to the obligation to bargain collectively in good faith as set forth in subsection (2) of this section.

(2) For the purpose of this chapter, to bargain collectively is the performance of the mutual obligation of the public employer or his designated representatives and the representatives of the exclusive representative to meet at reasonable times and negotiate in good faith with respect to wages, hours, fringe benefits, and other conditions of employment or the negotiation of an agreement or any question arising thereunder and the execution of a written contract incorporating any agreement reached. Such obligation does not compel either party to agree to a proposal or require the making of a concession.

(3) For purposes of state government only, the requirement of negotiating in good faith may be met by the submission of a negotiated settlement to the legislature in the executive budget or by bill or joint resolution. The failure to reach a negotiated settlement for submission is not, by itself, prima facie evidence of a failure to negotiate in good faith.

History: (1)En. Sec. 4, Ch. 441, L. 1973; Sec. 59-1604, R.C.M. 1947; (2), (3)En. Sec. 5, Ch. 441, L. 1973; amd. Sec. 1, Ch. 36, L. 1975; amd. Sec. 1, Ch. 97, L. 1975; amd. Sec. 2, Ch. 384, L. 1975; Sec. 59-1605, R.C.M. 1947; R.C.M. 1947, 59-1604, 59-1605(3), (4).

39-31-306. Collective bargaining agreements. (1) An agreement reached by the public employer and the exclusive representative must be reduced to writing and must be executed by both parties.

(2) Except as provided in subsection (5), an agreement may contain a grievance procedure culminating in final and binding arbitration of unresolved grievances and disputed interpretations of agreements.

(3) An agreement between the public employer and a labor organization must be valid and enforced under its terms when entered into in accordance with the provisions of this chapter and signed by the chief executive officer of the state or political subdivision or commissioner of higher education or by a representative. A publication of the agreement is not required to make it effective.

(4) The procedure for the making of an agreement between the state or political subdivision and a labor organization provided by this chapter is the exclusive method of making a valid agreement for public employees represented by a labor organization.

(5) An agreement to which a school is a party must contain a grievance procedure culminating in final and binding arbitration of unresolved and disputed interpretations of agreements. The aggrieved party may have the grievance or disputed interpretation of the agreement resolved either by final and binding arbitration or by any other available legal method and forum, but not by both. After a grievance has been submitted to arbitration, the grievant and the exclusive representative waive any right to pursue against the school an action or complaint that seeks the same remedy. If a grievant or the exclusive representative files a complaint or other action against the school, arbitration seeking the same remedy may not be filed or pursued under this section.

History: En. Sec. 10, Ch. 441, L. 1973; amd. Sec. 4, Ch. 313, L. 1974; R.C.M. 1947, 59-1610; amd. Sec. 1, Ch. 582, L. 1993.

39-31-307. Mediation of disputes. If, after a reasonable period of negotiation over the terms of an agreement or upon expiration of an existing collective bargaining agreement, a dispute concerning the collective bargaining agreement exists between the public employer and a labor organization, the parties shall request mediation.

History: En. Sec. 14, Ch. 441, L. 1973; amd. Sec. 1, Ch. 18, L. 1975; R.C.M. 1947, 59-1614(1).

39-31-308. Initiation of factfinding — designation of fact finder. (1) If, upon expiration of an existing collective bargaining agreement or 30 days following certification or recognition of an exclusive representative, a dispute concerning the collective bargaining agreement exists between the employer and the exclusive representative, either party may petition the board to initiate factfinding.

(2) Within 3 days of receipt of such petition, the board shall submit to the parties a list of five qualified, disinterested persons from which the parties shall alternate in striking two names. The remaining person shall be designated fact finder. This process shall be completed within 5 days of receipt of the list. The parties shall notify the board of the designated fact finder.

(3) If no request for factfinding is made by either party before the expiration of the agreement or 30 days following certification or recognition of an exclusive representative, the board may initiate factfinding as provided for in subsection (2) above.

History: En. Sec. 14, Ch. 441, L. 1973; amd. Sec. 1, Ch. 18, L. 1975; R.C.M. 1947, 59-1614(2) thru (4).

39-31-309. Factfinding proceedings. (1) The fact finder shall immediately establish dates and place of hearings.

(2) The public employer and the exclusive representative are the only proper parties to factfinding proceedings.

(3) Upon request of either party or the fact finder, the board shall issue subpoenas for hearings conducted by the fact finder. The fact finder may administer oaths.

(4) Upon completion of the hearings, but no later than 20 days from the date of appointment, the fact finder shall make written findings of facts and recommendations for resolution of the dispute and shall serve the findings on the public employer and the exclusive representative. The fact finder may make this report public 5 days after it is submitted to the parties. If the dispute is not resolved 15 days after the report is submitted to the parties, the report must be made public.

(5) When a party petitions the board to initiate factfinding, the cost of factfinding proceedings must be equally borne by the parties. When the board initiates factfinding, the cost of factfinding proceedings must be equally borne by the board and the parties.

(6) Nothing in 39-31-307 through 39-31-310 prohibits the fact finder from endeavoring to mediate the dispute in which the fact finder has been selected or appointed.

History: En. Sec. 14, Ch. 441, L. 1973; amd. Sec. 1, Ch. 18, L. 1975; R.C.M. 1947, 59-1614(5) thru (8); amd. Sec. 33, Ch. 397, L. 1979; amd. Sec. 10, Ch. 90, L. 1995.

39-31-310. Submission of issues to arbitration. Nothing in 39-31-307 through 39-31-310 prohibits the parties from voluntarily agreeing to submit any or all of the issues to final and binding arbitration, and if such agreement is reached, the arbitration shall supersede the factfinding procedures set forth in those sections. An agreement to arbitrate and the award issued in accordance with such agreement shall be enforceable in the same manner as is provided in this chapter for enforcement of collective bargaining agreements.

History: En. Sec. 14, Ch. 441, L. 1973; amd. Sec. 1, Ch. 18, L. 1975; R.C.M. 1947, 59-1614(9).

Cross-References

Uniform Arbitration Act, Title 27, ch. 5.

39-31-311. Training of fact finders and arbitrators. The board of personnel appeals shall establish a course of education for the training of fact finders and arbitrators. No person may serve as a fact finder or as an arbitrator under this chapter until he has successfully completed the course or equivalent education.

History: En. 59-1614.1 by Sec. 1, Ch. 57, L. 1977; R.C.M. 1947, 59-1614.1.

39-31-312. Nonnegotiable items for state prison. Collective bargaining agreements entered after July 14, 1982, may not contain provisions prohibiting or restricting the use of inmate labor as provided for in 53-30-151.

History: En. Sec. 3, Ch. 7, Sp. L. 1982.

Part 4

Unfair Labor Practices

Part Cross-References

Administrative contested case procedure, Title 2, ch. 4, part 6.

"Board" defined, 39-31-103.

"Labor organization" defined, 39-31-103.

"Public employer" defined, 39-31-103.

"Unfair labor practice" defined, 39-31-103.

39-31-401. Unfair labor practices of public employer. It is an unfair labor practice for a public employer to:

(1) interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in 39-31-201;

(2) dominate, interfere, or assist in the formation or administration of any labor organization; however, subject to rules adopted by the board under 39-31-104, an employer is not prohibited from permitting employees to confer with him during working hours without loss of time or pay;

(3) discriminate in regard to hire or tenure of employment or any term or condition of employment in order to encourage or discourage membership in any labor organization; however, nothing in this chapter or in any other statute of this state precludes a public employer from making an agreement with an exclusive representative to require, as a condition of employment, that an employee who is not or does not become a union member, must have an amount equal to the union initiation fee and monthly dues deducted from his wages in the same manner as checkoff of union dues;

(4) discharge or otherwise discriminate against an employee because he has signed or filed an affidavit, petition, or complaint or given any information or testimony under this chapter; or

(5) refuse to bargain collectively in good faith with an exclusive representative.

History: En. Sec. 5, Ch. 441, L. 1973; amd. Sec. 1, Ch. 36, L. 1975; amd. Sec. 1, Ch. 97, L. 1975; amd. Sec. 2, Ch. 384, L. 1975; R.C.M. 1947, 59-1605(1); amd. Sec. 34, Ch. 397, L. 1979.

39-31-402. Unfair labor practices of labor organization. It is an unfair labor practice for a labor organization or its agents to:

(1) restrain or coerce employees in the exercise of the right guaranteed in 39-31-201 or a public employer in the selection of his representative for the purpose of collective bargaining or the adjustment of grievances;

(2) refuse to bargain collectively in good faith with a public employer if it has been designated as the exclusive representative of employees;

(3) use agency shop fees for contributions to political candidates or parties at state or local levels.

History: En. Sec. 5, Ch. 441, L. 1973; amd. Sec. 1, Ch. 36, L. 1975; amd. Sec. 1, Ch. 97, L. 1975; amd. Sec. 2, Ch. 384, L. 1975; R.C.M. 1947, 59-1605(2).

39-31-403. Remedies for unfair labor practices. Violations of the provisions of 39-31-401 or 39-31-402 are unfair labor practices remediable by the board pursuant to this part.

History: En. Sec. 7, Ch. 441, L. 1973; R.C.M. 1947, 59-1607(part); amd. Sec. 35, Ch. 397, L. 1979.

39-31-404. Six-month limitation on unfair labor practice complaint — exception. No notice of hearing shall be issued based upon any unfair labor practice more than 6 months before the filing of the charge with the board unless the person aggrieved thereby was prevented from filing the charge by reason of service in the armed forces, in which event the 6-month period shall be computed from the day of his discharge.

History: En. Sec. 7, Ch. 441, L. 1973; R.C.M. 1947, 59-1607(part).

39-31-405. Unfair labor practice complaint — investigation — notice of hearing — service — answer. (1) Whenever a complaint is filed alleging that any person has engaged in or is engaging in any such unfair labor practice, the board shall issue and cause to be served upon the person a copy of the complaint and provide the person with an opportunity to respond to all charges. After receipt of responses from the charged party, an agent designated by the board for such purposes shall investigate the alleged unfair labor practice.

(2) If, after the investigation, the agent designated by the board determines that the charge is without probable merit, the board shall issue and cause to be served upon the complaining party and the person being charged notice of its intention to dismiss the complaint. The dismissal becomes a final order of the board unless either party requests a review of the decision to dismiss the complaint. The request for a review must be made in writing within 10 days of receipt of the notice of intention to dismiss. If a review is requested, the board may uphold its decision to dismiss the complaint or, pursuant to subsection (3), schedule a hearing on the merits. If the board upholds its decision to dismiss the complaint, the dismissal becomes a final order of the board.

(3) If after the investigation or after the review provided for in subsection (2), the board determines that there is probable merit for the charge, the board shall issue and cause to be served upon the complaining party and the party charged a notice of hearing before the board, a member thereof, or before a designated agent at a time and place therein fixed, not less than 5 working days after the date of service.

(4) If a hearing is to be held, the person against whom the charge is filed shall file an answer to the complaint.

(5) Each party to an unfair labor practice proceeding has the right to disqualify, without cause, the hearing examiner designated by the board to hear the complaint. The right may be exercised only once by each party and must be exercised within 5 days from the time a party is notified by the board of the hearing examiner designated to hear the matter. The exercise of this right is in addition to any rights a party has to disqualify a hearing examiner under 2-4-611.

History: En. Sec. 7, Ch. 441, L. 1973; R.C.M. 1947, 59-1607(part); amd. Sec. 1, Ch. 95, L. 1983; (5)En. Sec. 1, Ch. 211, L. 1983.

39-31-406. Hearing on complaint — findings — order. (1) The complainant and the person charged shall be parties and shall appear in person or otherwise give testimony at the place and time fixed in the notice of hearing. In the discretion of the board or its agent conducting the hearing, any other person may be allowed to intervene in the proceeding and present testimony.

(2) In any hearing the board is not bound by the rules of evidence prevailing in the courts.

(3) The testimony taken by the board or its agent shall be reduced to writing and filed with the board. Thereafter, in its discretion the board upon notice may take further testimony or hear argument.

(4) If, upon the preponderance of the testimony taken, the board is of the opinion that any person named in the complaint has engaged in or is engaging in an unfair labor practice, it shall state its findings of fact and shall issue and cause to be served on the person an order requiring him to cease and desist from the unfair labor practice and to take such affirmative action, including reinstatement of employees with or without backpay, as will effectuate the policies of this chapter. The order may further require the person to make reports from time to time showing the extent to which he has complied with the order. No order of the board shall require the reinstatement of any individual as an employee who has been suspended or discharged or the payment to him of any backpay if it is found that the individual was suspended or discharged for cause.

(5) If, upon the preponderance of the testimony taken, the board is not of the opinion that the person named in the complaint has engaged in or is engaging in the unfair labor practice, then the board shall state its findings of fact and shall issue an order dismissing the complaint.

(6) If the evidence is presented before a member of the board or before an examiner, the member or the examiner, as the case may be, shall issue and cause to be served on the parties to the proceeding a proposed decision, together with a recommended order, which shall be filed with the board, and if no exceptions are filed within 20 days after service thereof upon the parties or within such further period as the board may authorize, the recommended order shall become the order of the board. The board shall issue a final order within 5 months after final briefs are submitted to the hearings officer. If briefs are to be submitted, but either or both of the parties fail to submit their brief on the date set by the hearing examiner at the close of the hearing on the matter, then the board shall issue a final order within 5 months after the date the last brief was ordered to be submitted. If no briefs are to be submitted, the board shall issue a final order within 5 months after the hearing.

History: En. Sec. 7, Ch. 441, L. 1973; R.C.M. 1947, 59-1607(part); amd. Sec. 1, Ch. 369, L. 1979; amd. Sec. 1, Ch. 213, L. 1983.

39-31-407. Amendment of complaint. Any complaint may be amended by the complainant at any time prior to the issuance of an order based thereon, provided that the charged party is not unfairly prejudiced thereby.

History: En. Sec. 7, Ch. 441, L. 1973; R.C.M. 1947, 59-1607(part).

39-31-408. Modification by board of findings and order. Until the record in a proceeding has been filed in district court, the board at any time, upon reasonable notice and in such manner as it considers proper, may modify or set aside, in whole or in part, any finding or order made or issued by it.

History: **En. Sec. 7, Ch. 441, L. 1973; R.C.M. 1947, 59-1607(3).**

39-31-409. Court enforcement and review of board order. (1) The board or the complaining party may petition for the enforcement of the order of the board and for appropriate temporary relief or a restraining order and shall file in the district court at its own expense the record in the proceedings.

(2) Upon the filing of the petition, the district court shall have jurisdiction of the proceeding. Thereafter, the district court shall set the matter for hearing and shall order the party charged to be served with notice of hearing at least 20 days before the date set for hearing.

(3) No objection that has not been raised before the board shall be considered by the court unless the failure or neglect to raise the objection is excused because of extraordinary circumstances.

(4) The findings of the board with respect to questions of fact, if supported by substantial evidence on the record considered as a whole, shall be conclusive.

(5) If either party applies to the court for leave to present additional evidence and shows to the satisfaction of the court that the additional evidence is material and that there were reasonable grounds for the failure to present it in the hearing before the board, the court may order the additional evidence to be taken before the board and to be made part of the record. The board may modify its findings as to the facts or make new findings by reason of additional evidence so taken and filed, and it shall file the modifying or new findings with the district court.

(6) After the hearing, the district court shall issue its order granting such temporary or permanent relief or restraining order as it considers just and proper, enforcing as so modified or setting aside, in whole or in part, the order of the board. Any order of the district court shall be subject to review by the supreme court in accordance with rules of civil procedure.

(7) The commencement of proceedings under subsections (1) through (6) of this section shall not, unless specifically ordered by the court, operate as a stay of the board's order.

History: **En. Sec. 8, Ch. 441, L. 1973; R.C.M. 1947, 59-1608.**

Cross-References

Judicial review of contested cases, Title 2, ch. 4, part 7.

CHAPTER 32

COLLECTIVE BARGAINING FOR NURSES

Part 1 — General Provisions

39-32-101. Purpose of chapter.
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39-32-105. General classifications for health care facilities and appropriate units — petition for removal from general classification.
39-32-106. Determination of appropriate bargaining unit.
39-32-107. Repealed.

39-32-108. Repealed.
39-32-109. Unfair labor practices.
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39-32-111. Repealed.
39-32-112. Adjudication of unfair labor practices complaints by board.
39-32-113. Representation questions decided by board.
39-32-114. Subpoena power of board.

Chapter Cross-References

Regulation and licensure of nurses, Title 37, ch. 8.

Appropriate unit defined, 39-32-102.

Employee defined, 39-32-102.

Health care facility defined, 39-32-102.

Regulation and licensure of hospitals, Title 50, ch. 5.

Part 1
General Provisions

39-32-101. Purpose of chapter. The purpose of this chapter is to encourage effective measures to assure uninterrupted continuation of sufficient competent nursing care of the ill and infirm in the state and further to encourage the practice of mutually and peacefully agreeing upon the establishment and maintenance of desirable employment practices between nurse employees, professional and practical, and their health care facility employers, either public or private.

History: En. Sec. 1, Ch. 320, L. 1969; R.C.M. 1947, 41-2201.

39-32-102. Definitions. As used in this chapter, unless the context clearly requires otherwise, the following definitions apply:

(1) "Appropriate unit" means a homogenous group of employees (as herein defined) of a health care facility having similar duties and qualifications determined pursuant to 39-32-106.

(2) "Board" means the board of personnel appeals provided for in 2-15-1705.

(3) "Employee" means a registered professional or licensed practical nurse performing services for compensation for a health care facility but does not include a member of a religious order assigned to a health care facility by the order as a part of her obligation to the order.

(4) "Health care facility" means a hospital or nursing home or other agency or establishment employing employees as defined in this chapter, whether operated publicly or privately, having as one of its principal purposes the preservation of health or the care of sick or infirm individuals, or both.

(5) "Strike" shall mean any work stoppage caused by the employees of a health care facility, as defined in subsection (4) of this section, that interferes with the operation of the health care facility or affects the care of patients in the health care facility.

History: En. Sec. 2, Ch. 320, L. 1969; R.C.M. 1947, 41-2202(1) thru (3), (5); amd. Sec. 1, Ch. 485, L. 1983.

39-32-103. Rules. The board shall adopt and promulgate rules to carry into effect the provisions of this chapter.

History: En. Sec. 7, Ch. 320, L. 1969; R.C.M. 1947, 41-2207(3); amd. Sec. 2, Ch. 485, L. 1983.

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

39-32-104. Hearings for determination of appropriate unit. The board may set the time and place for hearings for determination of the composition of appropriate units when requested to make such determination under 39-32-106(2).

History: En. Sec. 7, Ch. 320, L. 1969; R.C.M. 1947, 41-2207(1); amd. Sec. 3, Ch. 485, L. 1983.

39-32-105. General classifications for health care facilities and appropriate units — petition for removal from general classification. (1) The board may determine, on its own motion by holding hearings or conducting such investigations as it thinks necessary, general classifications for health care facilities and appropriate units.

(2) When such determination has been made hereunder and when an application has been made by a health care facility or an employee organization for a specific determination as to it, the board may make such determination on the basis of such general classification.

(3) The health care facility or employee organization may, within 30 days after notice to it of such determination, file a request for a hearing upon written petition which shall set forth the facts which it believes remove it from such general classification, and hearing shall be held on such petition.

History: En. Sec. 7, Ch. 320, L. 1969; R.C.M. 1947, 41-2207(2); amd. Sec. 4, Ch. 485, L. 1983.

39-32-106. Determination of appropriate bargaining unit. (1) The composition of an appropriate unit in a health care facility, for purposes of this law, may be determined by mutual consent between such facility and the employees thereof.

(2) In the event no such mutual consent is available, then either the facility or representatives of employees may apply to the board and said board, through a duly designated agent, shall make a determination of the composition of such an appropriate unit.

(3) In determining such appropriate unit, professional employees may not be included in the same unit with nonprofessional employees unless a majority of professional employees in a proposed unit desire such inclusion. Weight shall be accorded similarity of duties, licensure, and conditions of employment, among other relevant factors, in determining an appropriate unit.

History: En. Sec. 4, Ch. 320, L. 1969; R.C.M. 1947, 41-2204; amd. Sec. 5, Ch. 485, L. 1983.

39-32-107. Repealed. Sec. 12, Ch. 485, L. 1983.

History: En. Sec. 5, Ch. 320, L. 1969; R.C.M. 1947, 41-2205.

39-32-108. Repealed. Sec. 12, Ch. 485, L. 1983.

History: En. Sec. 6, Ch. 320, L. 1969; R.C.M. 1947, 41-2206.

39-32-109. Unfair labor practices. (1) It is an unfair labor practice for a health care facility to do one or more of the following:

(a) interfere with or restrain or coerce employees in any manner in the exercise of their right of self-organization;

(b) initiate, create, dominate, contribute to, or interfere with the formation or administration of any employee organization that has collective bargaining as one of its principal functions;

(c) discriminate in regard to hire terms or conditions of employment when a purpose of such is to discourage membership in an employee organization that has collective bargaining as one of its principal functions;

(d) refuse to meet and bargain in good faith with the duly designated representatives of an appropriate bargaining unit of its employees. For the purpose of this subsection, it is a requirement of bargaining in good faith that the parties be willing to reduce in writing and have their representative sign any agreement arrived at through negotiations and discussion.

(e) unilaterally exclude from work or prevent from working or discharge any one or more employees when the purpose of such action is in whole or in part to interfere with or coerce or intimidate an employee in the exercise of rights assured in this law.

(2) It is an unfair labor practice for a labor organization or its agents to:

(a) restrain or coerce employees in the exercise of the right to:

(i) form, join, or assist any labor organization;

(ii) bargain collectively through representatives of their own choosing; or

(iii) engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection;

(b) restrain or coerce an employer in the selection of his representative for the purpose of collective bargaining or the adjustment of grievances;

(c) refuse to bargain collectively in good faith with an employer if it has been designated as the exclusive representative of employees;

(d) use agency shop fees for contributions to political candidates or parties.

History: En. Sec. 3, Ch. 320, L. 1969; R.C.M. 1947, 41-2203; amd. Sec. 6, Ch. 485, L. 1983; (2)En. Sec. 7, Ch. 485, L. 1983.

39-32-110. Unlawful strikes. It shall be unlawful for any employee of a health care facility, as defined in 39-32-102, to participate in a strike if there is another strike in effect at another health care facility within a radius of 150 miles. Employees of a health care facility, as defined in 39-32-102, or their duly elected representative must give the health care facility 30 days' written notice of any strike by them and must specify in the notice the day the strike is to begin.

History: En. Sec. 9, Ch. 320, L. 1969; R.C.M. 1947, 41-2209.

39-32-111. Repealed. Sec. 12, Ch. 485, L. 1983.

History: En. Sec. 8, Ch. 320, L. 1969; R.C.M. 1947, 41-2208.

39-32-112. Adjudication of unfair labor practices complaints by board. Violations of 39-32-109 are remediable by the board, and board orders are enforceable and reviewable by the court in the same manner as provided for in Title 39, chapter 31, part 4.

History: En. Sec. 8, Ch. 485, L. 1983.

39-32-113. Representation questions decided by board. Representation questions shall be decided by the board in the same manner as provided for in 39-31-207 through 39-31-210.

History: En. Sec. 9, Ch. 485, L. 1983.

39-32-114. Subpoena power of board. The board has the same power to subpoena witnesses and administer oaths and affirmations under this chapter as it does under Title 39, chapter 31, and the provisions of 39-31-106 and 39-31-107 are incorporated by reference into this chapter.

History: En. Sec. 10, Ch. 485, L. 1983.

Cross-References

Procedural rules on subpoenas, Rule 45, M.R.Civ.P. (see Title 25, ch. 20).

CHAPTER 33

GENERAL LIMITATIONS ON COLLECTIVE BARGAINING RIGHTS

Part 1 — Right to Work Without Union Interference in Certain Small Businesses

39-33-101. Intent of part.
39-33-102. Immediate family defined.
39-33-103. Unfair labor practice.
39-33-104. Beer and liquor establishment excepted.
39-33-105. Violation.

Part 2 — Employment of Strikebreakers

39-33-201. Recruitment of strikebreakers by third parties.
39-33-202. Professional strikebreakers prohibited.
39-33-203. Agreements to procure strikebreakers prohibited.
39-33-204. Advertising for strikebreakers restricted.
39-33-205. Penalties.

Part 1

Right to Work Without Union Interference in Certain Small Businesses

39-33-101. Intent of part. It is the intent of this part that a sole proprietor or a member of a partnership consisting of not more than two partners who own a retail or amusement establishment and the members of his immediate family shall have the right to do any work in his place of business without interference by any union or any member thereof.

History: En. Sec. 1, Ch. 160, L. 1959; R.C.M. 1947, 41-1801.

39-33-102. Immediate family defined. "Immediate family" shall include the owner, his spouse, and any children under the age of 18 years.

History: En. Sec. 3, Ch. 160, L. 1959; R.C.M. 1947, 41-1803.

39-33-103. Unfair labor practice. Any union or member thereof who shall infringe or interfere with the right of an owner and the members of his immediate family to do any work in his place of business shall be guilty of an unfair labor practice.

History: En. Sec. 2, Ch. 160, L. 1959; R.C.M. 1947, 41-1802.

39-33-104. Beer and liquor establishment excepted. Nothing in this part shall apply to an establishment that sells liquor or beer.

History: En. Sec. 4, Ch. 160, L. 1959; R.C.M. 1947, 41-1804.

Cross-References

Liquor licenses, Title 16, ch. 4.

39-33-105. Violation. Violation of any of the provisions of this part shall be punishable by a fine of $50.

History: En. Sec. 5, Ch. 160, L. 1959; R.C.M. 1947, 41-1805.

Part 2
Employment of Strikebreakers

39-33-201. Recruitment of strikebreakers by third parties. No person, partnership, firm, or officer or agent thereof may recruit, procure, supply, or refer a professional strikebreaker for employment in place of an employee involved in a labor dispute when such person, partnership, or firm is not a party to the dispute.

History: En. 41-2501 by Sec. 1, Ch. 40, L. 1975; R.C.M. 1947, 41-2501.

39-33-202. Professional strikebreakers prohibited. (1) An employer involved in a labor dispute may not employ in the place of an employee involved in such dispute a professional strikebreaker who customarily and repeatedly offers himself for employment in the place of employees involved in labor disputes.

(2) A professional strikebreaker who customarily and repeatedly offers himself for employment in place of employees involved in labor disputes may not take or offer to take the place in employment of an employee involved in a labor dispute within the state.

History: En. 41-2502 by Sec. 2, Ch. 40, L. 1975; R.C.M. 1947, 41-2502.

Cross-References

Importation of armed persons, Art. II, sec. 33, Mont. Const.

39-33-203. Agreements to procure strikebreakers prohibited. No employer involved in a labor dispute may contract or arrange with any other person, partnership, or firm for the latter to recruit, procure, supply, or refer professional strikebreakers for employment in place of employees involved in the dispute.

History: En. 41-2503 by Sec. 3, Ch. 40, L. 1975; R.C.M. 1947, 41-2503.

39-33-204. Advertising for strikebreakers restricted. No person, partnership, or firm may recruit, solicit, or advertise for employees or refer persons to employment in place of employees involved in a labor dispute without adequate notice in such advertisement or reference that there is a labor dispute at the place at which employment is offered and that the employment offered is in the place of employees involved in such dispute.

History: En. 41-2504 by Sec. 4, Ch. 40, L. 1975; R.C.M. 1947, 41-2504.

39-33-205. Penalties. A person convicted of violating 39-33-201, 39-33-202, or 39-33-203 shall be punished by a fine of not less than $1,000 or more than $5,000 or by imprisonment for not less than 1 or more than 2 years. A person convicted of violating 39-33-204 shall be punished by a fine of not less than $100 or more than $500 or imprisonment for not more than 30 days.

History: En. 41-2505 by Sec. 5, Ch. 40, L. 1975; R.C.M. 1947, 41-2505.

Cross-References

Classification of offenses, 45-1-201.

Misdemeanor defined, 45-2-101.

CHAPTER 34

ARBITRATION FOR FIREFIGHTERS

Part 1 — General Provisions

39-34-101. Arbitration between firefighters and public employers.
39-34-102. Designation of arbitrator.
39-34-103. Powers and duties of arbitrator for firefighters and public employers.
39-34-104. Collective bargaining permitted during arbitration.
39-34-105. Strikes limited.
39-34-106. Cost of arbitration.

Chapter Cross-References

Firefighters and fire protection, Title 7, ch. 33.

Uniform Arbitration Act, Title 27, ch. 5.

Part 1

General Provisions

39-34-101. Arbitration between firefighters and public employers. (1) This section applies only to firefighters and their public employers.

(2) If an impasse is reached in the course of collective bargaining between a public employer and a firefighters' organization or its exclusive representative and if the procedures for mediation and factfinding in 39-31-307 through 39-31-310 have been exhausted, either party or both jointly may petition the board of personnel appeals for final and binding arbitration.

History: En. Sec. 1, Ch. 472, L. 1979; amd. Sec. 165, Ch. 575, L. 1981.

39-34-102. Designation of arbitrator. Within 3 days of the receipt of a petition for final and binding arbitration, the board of personnel appeals shall submit to the parties a list of five qualified and disinterested arbitrators. From the list submitted by the board, the parties shall alternately strike two names. The remaining person shall be designated as the arbitrator. The parties shall notify the board of the designated arbitrator within 5 days of the receipt of the list.

History: En. Sec. 2, Ch. 472, L. 1979; amd. Sec. 166, Ch. 575, L. 1981.

39-34-103. Powers and duties of arbitrator for firefighters and public employers. (1) The arbitrator shall establish dates and a place for hearings and may subpoena witnesses and require the submission of evidence necessary to resolve the impasse.

(2) Prior to making a determination on any issue relating to the impasse, the arbitrator may refer the issues back to the parties for further negotiation.

(3) At the conclusion of the hearings, the arbitrator shall require the parties to submit their respective final position on matters in dispute.

(4) The arbitrator shall make a just and reasonable determination of which final position on matters in dispute will be adopted within 30 days of the commencement of the arbitration proceedings. The arbitrator shall notify the board of personnel appeals and the parties, in writing, of his determination.

(5) In arriving at a determination, the arbitrator shall consider any relevant circumstances, including:

(a) comparison of hours, wages, and conditions of employment of the employees involved with employees performing similar services and with other services generally;

(b) the interests and welfare of the public and the financial ability of the public employer to pay;

(c) appropriate cost-of-living indices;

(d) any other factors traditionally considered in the determination of hours, wages, and conditions of employment.

(6) The determination of the arbitrator is final and binding and is not subject to the approval of any governing body.

History: En. Sec. 3, Ch. 472, L. 1979; amd. Sec. 167, Ch. 575, L. 1981.

39-34-104. Collective bargaining permitted during arbitration. Nothing prohibits the parties to the impasse from reaching an agreement prior to the rendering of a determination by the arbitrator.

History: En. Sec. 4, Ch. 472, L. 1979.

39-34-105. Strikes limited. Strikes are prohibited during the term of any contract and the negotiations or arbitration of that contract.

History: En. Sec. 5, Ch. 472, L. 1979.

39-34-106. Cost of arbitration. The cost of arbitration shall be shared equally by the public employer and the firefighters' organization or its exclusive representative.

History: En. Sec. 6, Ch. 472, L. 1979.

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CHAPTER 51

UNEMPLOYMENT INSURANCE

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Part 1
General Provisions

39-51-101. Short title. This chapter shall be known and may be cited as the “Unemployment Insurance Law”.

History: En. Sec. 1, Ch. 137, L. 1937; R.C.M. 1947, 87-101; amd. Sec. 1, Ch. 57, L. 1979.

39-51-102. Declaration of state public policy. As a guide to the interpretation and application of this chapter, the public policy of this state is declared to be as follows:

(1) Economic insecurity due to unemployment is a serious menace to the health, morals, and welfare of the people of this state.

(2) Involuntary unemployment is, therefore, a subject of general interest and concern which requires appropriate action by the legislature to prevent its spread and to lighten its burden which now so often falls with crushing force upon the unemployed worker and his family. The achievement of social security requires protection against this greatest hazard of our economic life. This can be provided by encouraging employers to provide more stable employment and by the systematic accumulation of funds during periods of employment to provide benefits for periods of unemployment, thus maintaining purchasing power and limiting the serious social consequences of poor relief assistance.

(3) The legislature, therefore, declares that in its considered judgment the public good and the general welfare of the citizens of this state require the enactment of this measure under the police powers of the state for the compulsory setting aside of unemployment reserves to be used for the benefit of persons unemployed through no fault of their own.

History: En. Sec. 2, Ch. 137, L. 1937; R.C.M. 1947, 87-102.

39-51-103. Nonliability of state — right to benefits subject to provisions of chapter and extent of available funds. (1) Benefits shall be deemed to be due and payable under this chapter only to the extent provided in this chapter and to the extent that moneys are available therefor to the credit of the unemployment insurance fund, and neither the state nor the department shall be liable for any amount in excess of such sums.

(2) The legislature reserves the right to amend or repeal all or any part of this chapter at any time and there shall be no vested private right of any kind against such amendment or repeal. All the rights, privileges, or immunities

conferred by this chapter or by acts done pursuant thereto shall exist subject to the power of the legislature to amend or repeal this chapter at any time.

History: **(1)En. Sec. 18, Ch. 137, L. 1937; amd. Sec. 32, Ch. 368, L. 1975; Sec. 87-147, R.C.M. 1947; (2)En. Sec. 20, Ch. 137, L. 1937; Sec. 87-150, R.C.M. 1947; R.C.M. 1947, 87-147, 87-150; amd. Sec. 2, Ch. 57, L. 1979; amd. Sec. 1, Ch. 349, L. 1981.**

Cross-References

Laws giving irrevocable privileges prohibited, Art. II, sec. 31, Mont. Const.

Certain retrospective laws prohibited, Art. XIII, sec. 1, Mont. Const.

39-51-104. Chapter to become inoperative if federal act becomes inoperative. If Title III or Title IX of the federal Social Security Act is declared unconstitutional or in any way becomes inoperative, then this chapter shall terminate and cease and have no force and effect as of the date when said title or titles of said act are declared unconstitutional or become inoperative.

History: **En. Sec. 22, Ch. 137, L. 1937; R.C.M. 1947, 87-151.**

39-51-105. Disbursement of funds if federal act becomes inoperative. If Title III or IX of the federal Social Security Act is declared unconstitutional or in any way is inoperative, this chapter automatically becomes inoperative under the provisions of this chapter and the funds which then remain in the unemployment trust fund shall immediately be paid to the state treasurer to be paid into the unemployment insurance fund and funds there held shall be immediately distributed, upon order of the department, to the employers who have contributed thereto on a proportionate basis. If any part thereof remains undistributed for a period of 1 year it shall be paid to the general fund of the state.

History: **En. Subd. (d), Sec. 9, Ch. 137, L. 1937; amd. Sec. 8, Ch. 368, L. 1975; R.C.M. 1947, 87-114; amd. Sec. 2, Ch. 57, L. 1979; amd. Sec. 1, Ch. 349, L. 1981.**

39-51-106. Approval by secretary of labor required for chapter to have effect. If the secretary of labor shall fail to approve this chapter, the same shall immediately terminate and have no force and effect.

History: **En. Sec. 23, Ch. 137, L. 1937; amd. Sec. 12, Ch. 156, L. 1961; R.C.M. 1947, 87-152.**

39-51-107 through 39-51-109 reserved.

39-51-110. Collateral estoppel. A finding of fact or law, judgment, conclusion, or final order made with respect to a determination made under this chapter may not be conclusive or binding or used as evidence in any separate or subsequent action or proceeding in another forum except for proceedings under this chapter, regardless of whether the prior action was between the same or related parties or involved the same facts.

History: **En. Sec. 7, Ch. 442, L. 1999.**

Compiler's Comments

Effective Date: Section 29, Ch. 442, L. 1999, provided that this section is effective April 23, 1999.

Part 2
Definitions

Part Cross-References

General definitions, 39-51-201.

39-51-201. General definitions. As used in this chapter, unless the context clearly requires otherwise, the following definitions apply:

(1) "Annual payroll" means the total amount of wages paid by an employer, regardless of the time of payment, for employment during a calendar year.

(2) "Base period" means the first 4 of the last 5 completed calendar quarters immediately preceding the first day of an individual's benefit year. However, in the case of a combined-wage claim pursuant to the arrangement approved by the secretary of labor of the United States, the base period is the period applicable under the unemployment law of the paying state. For an individual who fails to meet the qualifications of 39-51-2105 or a similar statute of another state because of a temporary total disability, as defined in 39-71-116, or a similar statute of another state or the United States, the base period means the first 4 quarters of the last 5 completed calendar quarters preceding the disability if a claim for unemployment benefits is filed within 24 months of the date on which the individual's disability was incurred.

(3) "Benefit year", with respect to any individual, means the 52-consecutive-week period beginning with the first day of the calendar week in which the individual files a valid claim for benefits, except that the benefit year is 53 weeks if filing a new valid claim would result in overlapping any quarter of the base year of a previously filed new claim. A subsequent benefit year may not be established until the expiration of the current benefit year. However, in the case of a combined-wage claim pursuant to the arrangement approved by the secretary of labor of the United States, the base period is the period applicable under the unemployment law of the paying state.

(4) "Benefits" means the money payments payable to an individual, as provided in this chapter, with respect to the individual's unemployment.

(5) "Board" means the board of labor appeals provided for in Title 2, chapter 15, part 17.

(6) "Calendar quarter" means the period of 3 consecutive calendar months ending on March 31, June 30, September 30, or December 31.

(7) "Contributions" means the money payments to the state unemployment insurance fund required by this chapter but does not include assessments under 39-51-404(4).

(8) "Department" means the department of labor and industry provided for in Title 2, chapter 15, part 17.

(9) "Domestic or household service" means employment of persons other than members of the household for the purpose of tending to the aid and comfort of the employer or members of the employer's family, including but not limited to housecleaning and yard work, but does not include employment beyond the scope of normal household or domestic duties such as home health care or domiciliary care.

(10) "Employing unit" means any individual or organization (including the state government and any of its political subdivisions or instrumentalities), partnership, association, trust, estate, joint-stock company, insurance company, limited liability company or limited liability partnership that has filed with the secretary of state, or corporation, whether domestic or foreign, or the receiver, trustee in bankruptcy, trustee or the trustee's successor, or legal representative of a deceased person that has or had in its employ one or

more individuals performing services for it within this state, except as provided under 39-51-204(1)(a) and (1)(q). All individuals performing services within this state for any employing unit that maintains two or more separate establishments within this state are considered to be employed by a single employing unit for all the purposes of this chapter. Each individual employed to perform or assist in performing the work of any agent or employee of an employing unit is considered to be employed by the employing unit for the purposes of this chapter, whether the individual was hired or paid directly by the employing unit or by the agent or employee, provided that the employing unit has actual or constructive knowledge of the work.

(11) "Employment office" means a free public employment office or branch of an office operated by this state or maintained as a part of a state-controlled system of public employment offices or other free public employment offices operated and maintained by the United States government or its instrumentalities as the department may approve.

(12) "Fund" means the unemployment insurance fund established by this chapter to which all contributions and payments in lieu of contributions are required to be paid and from which all benefits provided under this chapter must be paid.

(13) "Gross misconduct" means a criminal act, other than a violation of a motor vehicle traffic law, for which an individual has been convicted in a criminal court or has admitted or conduct that demonstrates a flagrant and wanton disregard of and for the rights or title or interest of a fellow employee or the employer.

(14) "Hospital" means an institution that has been licensed, certified, or approved by the state as a hospital.

(15) "Independent contractor" means an individual who renders service in the course of an occupation and:

(a) has been and will continue to be free from control or direction over the performance of the services, both under a contract and in fact; and

(b) is engaged in an independently established trade, occupation, profession, or business.

(16) (a) "Institution of higher education", for the purposes of this part, means an educational institution that:

(i) admits as regular students only individuals having a certificate of graduation from a high school or the recognized equivalent of a certificate;

(ii) is legally authorized in this state to provide a program of education beyond high school;

(iii) provides an educational program for which it awards a bachelor's or higher degree or provides a program that is acceptable for full credit toward a bachelor's or higher degree, a program of postgraduate or postdoctoral studies, or a program of training to prepare students for gainful employment in a recognized occupation; and

(iv) is a public or other nonprofit institution.

(b) Notwithstanding subsection (16)(a), all universities in this state are institutions of higher education for purposes of this part.

(17) "State" includes, in addition to the states of the United States of America, the District of Columbia, Puerto Rico, the Virgin Islands, and Canada.

(18) "Taxes" means contributions and assessments required under this chapter but does not include penalties or interest for past-due or unpaid contributions or assessments.

(19) "Unemployment insurance administration fund" means the unemployment insurance administration fund established by this chapter from which administrative expenses under this chapter must be paid.

(20) (a) "Wages", unless specifically exempted under subsection (20)(b), means all remuneration payable for personal services, including the cash value of all remuneration paid in any medium other than cash. The reasonable cash value of remuneration payable in any medium other than cash must be estimated and determined pursuant to rules prescribed by the department. The term includes but is not limited to:

(i) commissions, bonuses, and remuneration paid for overtime work, holidays, vacations, and sickness periods;

(ii) severance or continuation pay, backpay, and any similar pay made for or in regard to previous service by the employee for the employer, other than retirement or pension benefits from a qualified plan; and

(iii) tips or other gratuities received by the employee, to the extent that the tips or gratuities are documented by the employee to the employer for tax purposes.

(b) The term "wages" does not include:

(i) the amount of any payment made by the employer for employees, if the payment was made for:

(A) retirement or pension pursuant to a qualified plan as defined under the provisions of the Internal Revenue Code;

(B) sickness or accident disability under a workers' compensation policy;

(C) medical or hospitalization expenses in connection with sickness or accident disability including health insurance for the employee or the employee's immediate family; or

(D) death, including life insurance for the employee or the employee's immediate family; or

(ii) employee expense reimbursements or allowances for meals, lodging, travel, subsistence, or other expenses, as set forth in department rules.

(21) "Week" means a period of 7 consecutive calendar days ending at midnight on Saturday.

(22) An individual's "weekly benefit amount" means the amount of benefits that the individual would be entitled to receive for 1 week of total unemployment.

History: (1), (14), (18) thru (21)En. Subd. (n) to (r), Sec. 19, Ch. 137, L. 1937; amd. Sec. 6, Ch. 137, L. 1939; amd. Sec. 10, Ch. 164, L. 1941; amd. Sec. 5, Ch. 233, L. 1943; amd. Sec. 6, Ch. 190, L. 1945; amd. Sec. 3, Ch. 238, L. 1955; amd. Sec. 12, Ch. 171, L. 1957; amd. Sec. 11, Ch. 156, L. 1961; amd. Sec. 4, Ch. 269, L. 1963; amd. Sec. 1, Ch. 200, L. 1969; amd. Sec. 33, Ch. 368, L. 1975; amd. Sec. 1, Ch. 115, L. 1977; Sec. 87-149, R.C.M. 1947; (2), (4) thru (13), (15) thru (17)En. Subd. (a) to (m), Sec. 19, Ch. 137, L. 1937; amd. Sec. 6, Ch. 137, L. 1939; amd. Sec. 10, Ch. 164, L. 1941; amd. Sec. 5, Ch. 233, L. 1943; amd. Sec. 1, Ch. 160, L. 1953; amd. Sec. 9, Ch. 164, L. 1955; amd. Sec. 11, Ch. 171, L. 1957; amd. Sec. 1, Ch. 177, L. 1959; amd. Sec. 1, Ch. 178, L. 1959; amd. Sec. 2, Ch. 84, L. 1965; amd. Sec. 2, Ch. 37, L. 1969; amd. Sec. 1, Ch. 411, L. 1971; amd. Sec. 1, Ch. 159, L. 1973; amd. Sec. 1, Ch. 404, L. 1973; amd. Sec. 3, Ch. 323, L. 1975; amd. Sec. 1, Ch. 523, L. 1977; Sec. 87-148, R.C.M. 1947; (3)En. Sec. 7, Ch. 137, L. 1937; amd. Sec. 3, Ch. 137, L. 1939; amd. Sec. 4, Ch. 164, L. 1941; amd. Sec. 2, Ch. 245, L. 1947; amd. Sec. 5, Ch. 191, L. 1953; amd. Sec. 2,

Ch. 164, L. 1955; amd. Sec. 3, Ch. 171, L. 1957; amd. Sec. 5, Ch. 156, L. 1961; amd. Sec. 3, Ch. 269, L. 1963; amd. Sec. 4, Ch. 4, Ex. L. 1969; amd. Sec. 1, Ch. 117, L. 1971; amd. Sec. 1, Ch. 163, L. 1973; amd. Sec. 1, Ch. 430, L. 1975; amd. Sec. 1, Ch. 165, L. 1977; Sec. 87-109, R.C.M. 1947; R.C.M. 1947, 87-109(part), 87-148(a) thru (h), (k) thru (p), 87-149(part); amd. Sec. 2, Ch. 57, L. 1979; amd. Sec. 1, Ch. 170, L. 1979; amd. Sec. 36, Ch. 397, L. 1979; amd. Sec. 1, Ch. 349, L. 1981; amd. Sec. 1, Ch. 245, L. 1983; amd. Sec. 1, Ch. 23, L. 1985; amd. Sec. 1, Ch. 125, L. 1985; amd. Sec. 1, Ch. 461, L. 1985; amd. Sec. 1, Ch. 234, L. 1987; amd. Sec. 1, Ch. 314, L. 1987; amd. Sec. 95, Ch. 370, L. 1987; amd. Sec. 1, Ch. 618, L. 1989; amd. Sec. 1, Ch. 261, L. 1991; amd. Sec. 1, Ch. 373, L. 1991; amd. Sec. 2, Ch. 195, L. 1995; amd. Sec. 3, Ch. 60, L. 1997; amd. Sec. 18, Ch. 491, L. 1997.

39-51-202. Employer defined. "Employer" means:

(1) any employing unit whose total annual payroll within either the current or preceding calendar year equals or exceeds the sum of $1,000;

(2) any agricultural employing unit that pays $20,000 or more in cash to workers for agricultural labor in any quarter in the current or preceding calendar year or employs 10 or more workers in agricultural labor on 20 days in 20 different weeks during the current or preceding calendar year;

(3) any domestic employing unit that pays $1,000 or more in cash for domestic service in any quarter during the current or preceding calendar year;

(4) any individual or employing unit which acquired the organization, trade, or business or substantially all of the assets thereof of another which at the time of such acquisition was an employer subject to this chapter;

(5) any individual or employing unit which acquired the organization, trade, or business or substantially all the assets thereof of another employing unit not an employer subject to this chapter and which, if subsequent to such acquisition it were treated as a single unit with such other employing unit, would be an employer under subsection (1) of this section;

(6) any employing unit not an employer by reason of any other subsection of this section for which, within either the current or preceding calendar year, service is or was performed with respect to which such employing unit is liable for any federal tax against which credit may be taken for contributions paid into a state unemployment fund or an employing unit which, as a condition for approval of this chapter for full tax credit against the tax imposed by the Federal Unemployment Tax Act, is required pursuant to such act to be an employer under this chapter;

(7) any employing unit which, having become an employer under subsection (1), (2), (3), (4), (5), or (6) has not, under 39-51-1101, ceased to be an employer subject to this chapter; or

(8) for the effective period of its election pursuant to 39-51-1102, any other employing unit which has elected to become fully subject to this chapter.

History: En. Subd. (a) to (m), Sec. 19, Ch. 137, L. 1937; amd. Sec. 6, Ch. 137, L. 1939; amd. Sec. 10, Ch. 164, L. 1941; amd. Sec. 5, Ch. 233, L. 1943; amd. Sec. 1, Ch. 160, L. 1953; amd. Sec. 9, Ch. 164, L. 1955; amd. Sec. 11, Ch. 171, L. 1957; amd. Sec. 1, Ch. 177, L. 1959; amd. Sec. 1, Ch. 178, L. 1959; amd. Sec. 2, Ch. 84, L. 1965; amd. Sec. 2, Ch. 37, L. 1969; amd. Sec. 1, Ch. 411, L. 1971; amd. Sec. 1, Ch. 159, L. 1973; amd. Sec. 1, Ch. 404, L. 1973; amd. Sec. 3, Ch. 323, L. 1975; amd. Sec. 1, Ch. 523, L. 1977; R.C.M. 1947, 87-148(part); amd. Sec. 37, Ch. 397, L. 1979; amd. Sec. 2, Ch. 125, L. 1985; amd. Sec. 2, Ch. 618, L. 1989; amd. Sec. 2, Ch. 373, L. 1991.

39-51-203. Employment defined. (1) "Employment", subject to other provisions of this section, means service by an individual, by a manager or member of a manager-managed limited liability company that has filed with the secretary of state, or by an officer of a corporation, including service in interstate commerce, performed for wages or under any contract of hire, written or oral, express or implied.

(2) (a) The term “employment” includes an individual’s entire service performed within or both within and outside this state if:

(i) the service is localized in this state; or

(ii) the service is not localized in any state but some of the service is performed in this state and:

(A) the base of operations or, if there is no base of operations, the place from which the service is directed or controlled is in this state; or

(B) the base of operations or the place from which the service is directed or controlled is not in any state in which some part of the service is performed, but the individual’s residence is in this state.

(b) Service is considered to be localized within a state if:

(i) the service is performed entirely within the state; or

(ii) the service is performed both within and outside the state, but the service performed outside the state is incidental to the individual’s service within the state; for example, the out-of-state service is temporary or transitory in nature or consists of isolated transactions.

(3) Service not covered under subsection (2) and performed entirely outside the state and on which contributions are neither required nor paid under an unemployment insurance law of any other state or of the federal government is considered to be employment subject to this chapter if the individual performing the services is a resident of this state and the department approves the election of the employing unit for whom the services are performed in order that the entire service of the individual is considered to be employment subject to this chapter.

(4) Service performed by an individual for wages is considered to be employment subject to this chapter until it is shown to the satisfaction of the department that the individual is an independent contractor.

(5) The term “employment” includes service performed by an individual in the employ of this state or any of its instrumentalities (or in the employ of this state and one or more other states or their instrumentalities) for a hospital or institution of higher education located in this state. The term “employment” includes service performed by all individuals, including those individuals who work for the state of Montana, its universities, public schools, components or units of universities or public schools, or any local government unit and one or more other states or their instrumentalities or political subdivisions whose services are compensated by salary or wages.

(6) The term “employment” includes service performed by an individual in the employ of a religious, charitable, scientific, literary, or educational organization.

(7) (a) The term “employment” includes the service of an individual who is a citizen of the United States performed outside the United States, except in Canada, in the employ of an American employer, other than service that is considered employment under the provisions of subsection (2) or the parallel provisions of another state’s law, if:

(i) the employer’s principal place of business in the United States is located in this state;

(ii) the employer has no place of business in the United States, but:

(A) the employer is an individual who is a resident of this state;

(B) the employer is a corporation that is organized under the laws of this state; or

(C) the employer is a partnership or a trust and the number of the partners or trustees who are residents of this state is greater than the number who are residents of any other state; or

(iii) none of the criteria of subsections (7)(a)(i) and (7)(a)(ii) are met, but the employer has elected coverage in this state or, the employer having failed to elect coverage in any state, the individual has filed a claim for benefits based on the service under the law of this state.

(b) An "American employer", for purposes of this subsection (7), means a person who is:

(i) an individual who is a resident of the United States;

(ii) a partnership if two-thirds or more of the partners are residents of the United States;

(iii) a trust if all of the trustees are residents of the United States; or

(iv) a corporation organized under the laws of the United States or of any state.

History: En. Subd. (a) to (m), Sec. 19, Ch. 137, L. 1937; amd. Sec. 6, Ch. 137, L. 1939; amd. Sec. 10, Ch. 164, L. 1941; amd. Sec. 5, Ch. 233, L. 1943; amd. Sec. 1, Ch. 160, L. 1953; amd. Sec. 9, Ch. 164, L. 1955; amd. Sec. 11, Ch. 171, L. 1957; amd. Sec. 1, Ch. 177, L. 1959; amd. Sec. 1, Ch. 178, L. 1959; amd. Sec. 2, Ch. 84, L. 1965; amd. Sec. 2, Ch. 37, L. 1969; amd. Sec. 1, Ch. 411, L. 1971; amd. Sec. 1, Ch. 159, L. 1973; amd. Sec. 1, Ch. 404, L. 1973; amd. Sec. 3, Ch. 323, L. 1975; amd. Sec. 1, Ch. 523, L. 1977; R.C.M. 1947, 87-148(part); amd. Sec. 2, Ch. 57, L. 1979; amd. Sec. 38, Ch. 397, L. 1979; amd. Sec. 1, Ch. 349, L. 1981; amd. Sec. 2, Ch. 234, L. 1987; amd. Sec. 2, Ch. 314, L. 1987; amd. Sec. 3, Ch. 618, L. 1989; amd. Sec. 3, Ch. 373, L. 1991; amd. Sec. 3, Ch. 195, L. 1995.

39-51-204. Exclusions from definition of employment. (1) The term "employment" does not include:

(a) domestic or household service in a private home, local college club, or local chapter of a college fraternity or sorority, except as provided in 39-51-202(3). If an employer is otherwise subject to this chapter and has domestic or household service employment, all employees engaged in domestic or household service must be excluded from coverage under this chapter if the employer:

(i) does not meet the monetary payment test in any quarter or calendar year, as applicable, for the subject wages attributable to domestic or household service; and

(ii) keeps separate books and records to account for the employment of persons in domestic or household service.

(b) service performed by a dependent member of a sole proprietor for whom an exemption may be claimed under 26 U.S.C. 152 or service performed by a sole proprietor's spouse for whom an exemption based on marital status may be claimed by the sole proprietor under 26 U.S.C. 7703;

(c) service performed as a freelance correspondent or newspaper carrier if the person performing the service, or a parent or guardian of the person performing the service in the case of a minor, has acknowledged in writing that the person performing the service and the service are not covered. As used in this subsection:

(i) "freelance correspondent" is a person who submits articles or photographs for publication and is paid by the article or by the photograph; and

(ii) "newspaper carrier" means a person who provides a newspaper with the service of delivering newspapers singly or in bundles. The term does not include an employee of the paper who, incidentally to the employee's main duties, carries or delivers papers.

(d) service performed as a real estate broker or salesperson who is licensed pursuant to Title 37, chapter 51;

(e) service performed by a cosmetologist who is licensed under Title 37, chapter 31, or a barber who is licensed under Title 37, chapter 30, and:

(i) who has acknowledged in writing that the cosmetologist or barber is not covered by unemployment insurance and workers' compensation;

(ii) who contracts with a cosmetology salon, as defined in 37-31-101, or a barbershop, as defined in 37-30-101, which contract must show that the cosmetologist or barber:

(A) is free from all control and direction of the owner in the contract;

(B) receives payment for service from individual clientele; and

(C) leases, rents, or furnishes all of the cosmetologist's or barber's own equipment, skills, or knowledge; and

(iii) whose contract gives rise to an action for breach of contract in the event of contract termination. The existence of a single license for the cosmetology salon or barbershop may not be construed as a lack of freedom from control or direction under this subsection.

(f) casual labor not in the course of an employer's trade or business performed in any calendar quarter, unless the cash remuneration paid for the service is $50 or more and the service is performed by an individual who is regularly employed by the employer to perform the service. "Regularly employed" means that the service is performed during at least 24 days in the same quarter.

(g) service performed by sole proprietors, working members of a partnership, members of a member-managed limited liability company that has filed with the secretary of state, or partners in a limited liability partnership that has filed with the secretary of state;

(h) service performed for the installation of floor coverings if the installer:

(i) bids or negotiates a contract price based upon work performed by the yard or by the job;

(ii) is paid upon completion of an agreed-upon portion of the job or after the job is completed;

(iii) may perform service for anyone without limitation;

(iv) may accept or reject any job;

(v) furnishes substantially all tools and equipment necessary to provide the service; and

(vi) works under a written contract that:

(A) gives rise to a breach of contract action if the installer or any other party fails to perform the contract obligations;

(B) states that the installer is not covered by unemployment insurance; and

(C) requires the installer to provide a current workers' compensation policy or to obtain an exemption from workers' compensation requirements;

(i) service performed as a direct seller as defined by 26 U.S.C. 3508;

(j) service performed by a petroleum land professional. As used in this subsection, "petroleum land professional" means a person who:

(i) is engaged primarily in negotiating for the acquisition or divestiture of mineral rights or in negotiating a business agreement for the exploration or development of minerals;

(ii) is paid for service that is directly related to the completion of a contracted specific task rather than on an hourly wage basis; and

(iii) performs all services as an independent contractor pursuant to a written contract.

(k) service performed by an ordained, commissioned, or licensed minister of a church in the exercise of the church's ministry or by a member of a religious order in the exercise of duties required by the order;

(l) service performed by an individual receiving rehabilitation or remunerative work in a facility conducted for the purpose of carrying out a program of rehabilitation for individuals whose earning capacity is impaired by age or physical or mental deficiency or injury or providing remunerative work for individuals who, because of impaired physical or mental capacity, cannot be readily absorbed in the competitive labor market;

(m) service performed as part of an unemployment work-relief or work-training program assisted or financed in whole or in part by a federal agency or any agency of a state or political subdivision of the state by an individual receiving work relief or work training;

(n) service performed for a state prison or other state correctional or custodial institution by an inmate of that institution;

(o) service performed by an individual who is sentenced to perform court-ordered community service or similar work;

(p) service performed by elected public officials;

(q) agricultural labor, except as provided in 39-51-202(2), (4), or (6). If an employer is otherwise subject to this chapter and has agricultural employment, all employees engaged in agricultural labor must be excluded from coverage under this chapter if the employer:

(i) in any quarter or calendar year, as applicable, does not meet either of the tests relating to the monetary amount or number of employees and days worked for the subject wages attributable to agricultural labor; and

(ii) keeps separate books and records to account for the employment of persons in agricultural labor.

(r) service performed in the employ of any other state or its political subdivisions or of the United States government or of an instrumentality of any other state or states or their political subdivisions or of the United States, except that national banks organized under the national banking law are not entitled to exemption under this subsection and are subject to this chapter the same as state banks, if the service is excluded from employment as defined in section 3306(c)(7) of the Federal Unemployment Tax Act;

(s) service in which unemployment insurance is payable under an unemployment insurance system established by an act of congress if the department enters into agreements with the proper agencies under an act of congress and those agreements become effective in the manner prescribed in the Montana Administrative Procedure Act for the adoption of rules, to provide reciprocal treatment to individuals who have, after acquiring potential rights to benefits under this chapter, acquired rights to unemployment insurance under an act of congress or who have, after acquiring potential rights to unemployment insurance under the act of congress, acquired rights to benefits under this chapter;

(t) service performed in the employ of a school or university if the service is performed by a student who is enrolled and is regularly attending classes at a school or university or by the spouse of a student if the spouse is advised, at the time that the spouse commences to perform the service, that the employment of the spouse to perform the service is provided under a program to provide financial assistance to the student by the school or university and that the employment is not covered by any program of unemployment insurance;

(u) service performed by an individual who is enrolled at a nonprofit or public educational institution that normally maintains a regular faculty and curriculum and normally has a regularly organized body of students in attendance at the place where its educational activities are carried on, as a student in a full-time program taken for credit at an institution that combines academic instruction with work experience if the service is an integral part of the program and the institution has certified that fact to the employer, except that this subsection (1)(u) does not apply to service performed in a program established for or on behalf of an employer or group of employers;

(v) service performed as an officer or member of the crew of a vessel on the navigable waters of the United States; or

(w) service performed by an alien admitted to the United States to perform agricultural labor pursuant to sections 214(c) and 1101(a)(H)(ii)(a) of the Immigration and Nationality Act.

(2) An individual found to be an independent contractor by the department under the terms of 39-71-401(3) is considered an independent contractor for the purposes of this chapter. An independent contractor is not precluded from filing a claim for benefits and receiving a determination pursuant to 39-51-2402.

(3) This section does not apply to a state or local governmental entity or a nonprofit organization defined under section 501(c)(3) of the Internal Revenue Code unless the service is excluded from employment as defined in the Federal Unemployment Tax Act.

History: En. Subd. (a) to (m), Sec. 19, Ch. 137, L. 1937; amd. Sec. 6, Ch. 137, L. 1939; amd. Sec. 10, Ch. 164, L. 1941; amd. Sec. 5, Ch. 233, L. 1943; amd. Sec. 1, Ch. 160, L. 1953; amd. Sec. 9, Ch. 164, L. 1955; amd. Sec. 11, Ch. 171, L. 1957; amd. Sec. 1, Ch. 177, L. 1959; amd. Sec. 1, Ch. 178, L. 1959; amd. Sec. 2, Ch. 84, L. 1965; amd. Sec. 2, Ch. 37, L. 1969; amd. Sec. 1, Ch. 411, L. 1971; amd. Sec. 1, Ch. 159, L. 1973; amd. Sec. 1, Ch. 404, L. 1973; amd. Sec. 3, Ch. 323, L. 1975; amd. Sec. 1, Ch. 523, L. 1977; R.C.M. 1947, 87-148(part); amd. Sec. 2, Ch. 57, L. 1979; amd. Sec. 1, Ch. 67, L. 1979; amd. Sec. 39, Ch. 397, L. 1979; amd. Sec. 1, Ch. 349, L. 1981; amd. Sec. 1, Ch. 357, L. 1983; amd. Sec. 3, Ch. 125, L. 1985; amd. Sec. 3, Ch. 234, L. 1987; amd. Sec. 1, Ch. 526, L. 1987; amd. Sec. 4, Ch. 618, L. 1989; amd. Sec. 4, Ch. 373, L. 1991; amd. Sec. 1, Ch. 573, L. 1991; amd. Sec. 1, Ch. 171, L. 1993; amd. Sec. 11, Ch. 473, L. 1993; amd. Sec. 2, Ch. 48, L. 1995; amd. Sec. 1, Ch. 95, L. 1995; amd. Sec. 4, Ch. 195, L. 1995; amd. Sec. 4, Ch. 60, L. 1997; amd. Sec. 19, Ch. 491, L. 1997; amd. Sec. 2, Ch. 61, L. 1999.

Compiler's Comments

1999 Amendment: Chapter 61 in (1)(q) inserted reference to subsections (4) and (6) of 39-51-202. Amendment effective July 1, 1999.

39-51-205. Agricultural labor defined. (1) The term "agricultural labor" includes all services performed prior to January 1, 1972, which was agricultural labor as defined in this section prior to such date and remunerated services performed after December 31, 1971:

(a) on a farm, in the employ of any person in connection with cultivating the soil, or in connection with raising or harvesting any agricultural or horticultural commodity, including the raising, shearing, feeding, caring for, training, and management of livestock, bees, poultry, and fur-bearing animals and wildlife;

(b) in the employ of the owner or tenant or other operator of a farm in connection with the operation, management, conservation, improvement, or maintenance of such farm and its tools and equipment or in salvaging timber or clearing land of brush and other debris left by a hurricane if the major part of such service is performed on a farm;

(c) in connection with the production or harvesting of any commodity commonly known as agricultural commodities or in connection with the hatching of poultry or in connection with the operation or maintenance of ditches, canals, reservoirs, or waterways used exclusively for supplying and storing water for farming purposes, except where such ditches, canals, reservoirs, or waterways are owned and operated by government entities;

(d) in the employ of the operator of a farm or a group of operators of farms or a cooperative organization of which such operators are members in handling, planting, drying, packing, packaging, processing, freezing, grading, storing, or delivering to storage or to market or to a carrier for transportation to market in its unmanufactured state any agricultural or horticultural commodity, but only if such operator or operators produced more than one-half of the commodity with respect to which such service is performed.

(2) The provisions of subsections (1)(a), (1)(b), (1)(c), and (1)(d) of this section shall not be deemed to be applicable with respect to service performed in connection with commercial canning or commercial freezing or in connection with any agricultural or horticultural commodity after its delivery to a terminal market for distribution for consumption or on a farm operated for profit if such service is not in the course of the employer's trade or business or is domestic service in a private home of the employer.

(3) As used in this section, the term "farm" includes stock, dairy, poultry, fruit, fur-bearing animals, and truck farms, plantations, ranches, nurseries, ranges, greenhouses, or other similar structures used primarily for the raising of agricultural or horticultural commodities and orchards.

History: En. Subd. (a) to (m), Sec. 19, Ch. 137, L. 1937; amd. Sec. 6, Ch. 137, L. 1939; amd. Sec. 10, Ch. 164, L. 1941; amd. Sec. 5, Ch. 233, L. 1943; amd. Sec. 1, Ch. 160, L. 1953; amd. Sec. 9, Ch. 164, L. 1955; amd. Sec. 11, Ch. 171, L. 1957; amd. Sec. 1, Ch. 177, L. 1959; amd. Sec. 1, Ch. 178, L. 1959; amd. Sec. 2, Ch. 84, L. 1965; amd. Sec. 2, Ch. 37, L. 1969; amd. Sec. 1, Ch. 411, L. 1971; amd. Sec. 1, Ch. 159, L. 1973; amd. Sec. 1, Ch. 404, L. 1973; amd. Sec. 3, Ch. 323, L. 1975; amd. Sec. 1, Ch. 523, L. 1977; R.C.M. 1947, 87-148(part).

39-51-206. Agricultural labor — who treated as employer of member of a crew furnished by a crew leader. (1) For the purposes of

39-51-203, any individual who is a member of a crew furnished by a crew leader to perform service in agricultural labor for any other person shall be treated as an employee of such crew leader if:

(a) such crew leader holds a valid certificate of registration under the Migrant and Seasonal Agricultural Worker Protection Act, as amended (29 U.S.C. 1801, et seq.); or

(b) (i) substantially all the members of such crew operate or maintain tractors, mechanized harvesting or cropdusting equipment, or any other mechanized equipment which is provided by such crew leader; and

(ii) such individual is not an employee of such other person for whom services in agricultural labor are performed.

(2) In the case of any individual who is furnished by a crew leader to perform service in agricultural labor for any other person and who is not treated as an employee of such crew leader under subsection (1):

(a) such other person and not the crew leader shall be treated as the employer of such individual; and

(b) such other person shall be treated as having paid cash remuneration to such individual in an amount equal to the amount of cash remuneration paid to such individual by the crew leader, either on his own behalf or on behalf of such other person, for the service in agricultural labor performed for such other person.

(3) The term "crew leader" means an individual who:

(a) furnishes individuals to perform service in agricultural labor for any other person;

(b) pays, either on his own behalf or on behalf of such other person, the individuals so furnished by him for the service in agricultural labor performed by them; and

(c) has not entered into a written agreement with such other person under which such individual is designated as an employee of such other person.

History: En. Subd. (a) to (m), Sec. 19, Ch. 137, L. 1937; amd. Sec. 6, Ch. 137, L. 1939; amd. Sec. 10, Ch. 164, L. 1941; amd. Sec. 5, Ch. 233, L. 1943; amd. Sec. 1, Ch. 160, L. 1953; amd. Sec. 9, Ch. 164, L. 1955; amd. Sec. 11, Ch. 171, L. 1957; amd. Sec. 1, Ch. 177, L. 1959; amd. Sec. 1, Ch. 178, L. 1959; amd. Sec. 2, Ch. 84, L. 1965; amd. Sec. 2, Ch. 37, L. 1969; amd. Sec. 1, Ch. 411, L. 1971; amd. Sec. 1, Ch. 159, L. 1973; amd. Sec. 1, Ch. 404, L. 1973; amd. Sec. 3, Ch. 323, L. 1975; amd. Sec. 1, Ch. 523, L. 1977; R.C.M. 1947, 87-148(part); amd. Sec. 5, Ch. 618, L. 1989; amd. Sec. 5, Ch. 373, L. 1991.

Part 3

General Administrative Provisions

Part Cross-References

Montana Administrative Procedure Act — adoption and publication of rules, Title 2, ch. 4, part 3.

Civil rules on subpoenas, Rule 45, M.R.Civ.P. (see Title 25, ch. 20).

General definitions, 39-51-201.

39-51-301. Administration — duties and powers of department. (1) It is the duty of the department to administer this chapter and it may adopt, amend, or rescind rules, to employ persons, make expenditures, require reports, make investigations, and take action as it considers necessary or suitable in administering this chapter.

(2) The department shall determine its own organization and methods of procedure in accordance with the provisions of this chapter and shall have an official seal, which is judicially noticed.

(3) Whenever the department believes that a change in contribution or benefit rates will become necessary to protect the solvency of the fund, it shall promptly inform the governor and the legislature and make recommendations with respect to the change.

(4) The department and the board may issue subpoenas and compel testimony and the production of evidence, including books and records, in regard to any investigation or proceeding under this chapter.

(5) The department shall delegate to the department of revenue duties associated with the administration of unemployment insurance contributions and the employment security account so long as the duties are carried out in conformity with the requirements of the program budget plan with the United States department of labor. The delegated duties do not include oversight duties such as revenue quality control, risk management, and trust fund management. The department of revenue must receive funds from the department for the performance of the delegated duties. The department of revenue has rulemaking authority with respect to any function or duty delegated to the department of revenue pursuant to this section.

(6) Employees transferring from the department to the department of revenue as a result of a delegation of duties in subsection (5) are entitled to all rights including those under 2-15-131, possessed as a state officer or employee before transferring, including rights to tenure in office and of rank or grade, rights to vacation and sick pay and leave, rights under any retirement or personnel plan or labor union contract, rights to compensatory time earned, and any other rights under any law or administrative policy including the State Employee Protection Act. Employees transferring must be considered internal applicants by the department for recruitment purposes for the period from July 1, 1997, through June 30, 1998.

(7) The department of revenue shall succeed the department in its rights to property relating to the delegation of duties in subsection (5) to the extent that is consistent with federal property transfer policy. The property includes real property, records, office equipment, forms, supplies, and contracts other than the program budget plan with the United States department of labor.

(8) (a) The delegation of duties in subsection (5) does not affect the validity of any pending judicial or administrative proceeding.

(b) Appeals that were filed with the board of labor appeals or the department's hearings bureau before July 1, 1997, must follow the procedures and processes in effect when the appeal was first taken. An appeal that is filed on or after July 1, 1997, must be taken in accordance with the procedures and processes in effect on the date the appeal is filed.

(c) The department of revenue must be substituted for the department and succeed to all audits, determinations, and other actions that have not been appealed to the board of labor appeals or the department's hearings bureau prior to July 1, 1997.

(9) The rights, privileges, and duties of the holders of bonds and other obligations issued and of the parties to contracts, leases, indentures, and other transactions entered into before the delegation of duties in subsection (5)

remain in effect, and none of those rights, privileges, duties, covenants, or agreements are impaired or diminished by reason of the delegation of duties. The department of revenue is substituted for the department and, subject to the provisions of subsection (5), succeeds to the rights and duties under the provisions of those bonds, contracts, leases, indentures, and other transactions. The provisions of this subsection (9) do not apply to the program budget plan agreement between the department and the United States department of labor.

History: En. Subd. (a), Sec. 11, Ch. 137, L. 1937; amd. Sec. 6, Ch. 156, L. 1961; amd. Sec. 40, Ch. 93, L. 1969; amd. Sec. 11, Ch. 368, L. 1975; R.C.M. 1947, 87-120; amd. Sec. 1, Ch. 349, L. 1981; amd. Sec. 11, Ch. 125, L. 1983; amd. Sec. 4, Ch. 125, L. 1985; amd. Sec. 20, Ch. 491, L. 1997; amd. Sec. 3, Ch. 61, L. 1999.

Compiler's Comments

1999 Amendment: Chapter 61 inserted fourth sentence in (5) granting the department of revenue rulemaking authority for any function or duty delegated by section. Amendment effective July 1, 1999.

Cross-References

Rights to property, 2-15-132.

Rules and orders, 2-15-133.

Legal proceedings, 2-15-134.

Rights and duties under existing transactions, 2-15-135.

39-51-302. Administrative rules. (1) The department may adopt procedural and substantive rules necessary to implement this chapter.

(2) The department shall delegate rulemaking authority to the department of revenue with respect to any function or duty delegated to the department of revenue pursuant to 39-51-301(5).

History: En. Subd. (b), Sec. 11, Ch. 137, L. 1937; amd. Sec. 12, Ch. 368, L. 1975; R.C.M. 1947, 87-121; amd. Sec. 1, Ch. 349, L. 1981; amd. Sec. 5, Ch. 125, L. 1985; amd. Sec. 4, Ch. 61, L. 1999.

Compiler's Comments

1999 Amendment: Chapter 61 inserted (2) requiring department of labor and industry to delegate to department of revenue rulemaking authority for function or duty delegated by section; and made minor changes in style. Amendment effective July 1, 1999.

39-51-303. Publication and distribution of materials. The department shall cause to be printed for distribution to the public the text of this chapter, the department's regulations and general and special rules, and any other material the department considers relevant and suitable and shall furnish the same to any person upon application.

History: En. Subd. (c), Sec. 11, Ch. 137, L. 1937; amd. Sec. 13, Ch. 368, L. 1975; R.C.M. 1947, 87-122; amd. Sec. 1, Ch. 349, L. 1981; amd. Sec. 1, Ch. 370, L. 1989.

39-51-304. Personnel. The department shall hire personnel to administer this chapter in accordance with principles adopted by the department of administration.

History: En. Subd. (d), Sec. 11, Ch. 137, L. 1937; amd. Sec. 14, Ch. 368, L. 1975; R.C.M. 1947, 87-123; amd. Sec. 40, Ch. 397, L. 1979; amd. Sec. 1, Ch. 349, L. 1981; amd. Sec. 6, Ch. 125, L. 1985; amd. Sec. 45, Ch. 18, L. 1995.

39-51-305. Department to appoint appeals referees. To hear and decide disputed claims, the department shall appoint such impartial salaried appeals referees as are necessary for the proper administration of this chapter in accordance with 39-51-304. No person shall participate on behalf of the department in any case in which he is an interested party. The department may designate alternates to serve in the absence or disqualification of an appeals referee.

History: En. Sec. 6 (a) to (e), Ch. 137, L. 1937; amd. Sec. 2, Ch. 171, L. 1957; amd. Sec. 1, Ch. 262, L. 1973; amd. Sec. 3, Ch. 368, L. 1975; amd. Sec. 1, Ch. 20, L. 1977; R.C.M. 1947, 87-107(d); amd. Sec. 1, Ch. 349, L. 1981; amd. Sec. 7, Ch. 125, L. 1985.

39-51-306. Repealed. Sec. 5, Ch. 349, L. 1981.

History: En. Subd. (b), Sec. 10, Ch. 137, L. 1937; amd. Sec. 2, Ch. 132, L. 1969; amd. Sec. 10, Ch. 368, L. 1975; R.C.M. 1947, 87-118.

39-51-307. Department to create employment service. (1) The department shall establish and maintain free public employment offices in the number and in places that may be necessary for the proper administration of this chapter and for the purpose of performing the duties that are within the purview of the act of congress entitled, "An act to provide for the establishment of a national employment system and for cooperation with the states in the promotion of such system, and for other purposes", approved June 6, 1933 (29 U.S.C. 49), as amended.

(2) The department is charged with the duty to cooperate with any official or agency of the United States having power or duties under the provisions of the act of congress, as amended, and to do and perform all things necessary to secure to this state the benefits of the act of congress, as amended, in the promotion and maintenance of a system of public employment offices.

(3) The provisions of the act of congress, as amended, are accepted by this state in conformity with section 4 of that act, and this state shall observe and comply with the requirements of the act. The department is designated and constituted the agency of this state for the purpose of the act.

(4) For the purpose of establishing and maintaining free public employment offices, the department is authorized to enter into agreements with any political subdivisions of this state or with any private, nonprofit organization, and as a part of such an agreement, the department may accept money, services, or quarters as a contribution to the employment service account.

History: En. Sec. 12, Ch. 137, L. 1937; amd. Sec. 6, Ch. 164, L. 1941; amd. Sec. 21, Ch. 368, L. 1975; R.C.M. 1947, 87-132; amd. Sec. 2, Ch. 349, L. 1981; amd. Sec. 163, Ch. 42, L. 1997.

39-51-308. Acquisition and disposition of property by department. (1) Subject to the approval of the department of administration, the department may purchase such equipment, supplies, and real property as it may deem necessary and proper. The title to any real property purchased shall be taken in the name of the state of Montana.

(2) Subject to the approval of the department of administration, the department may sell any equipment, supplies, or real property previously acquired by it, and the proceeds of such sale shall be deposited into the unemployment insurance administration fund.

(3) In the event the duties or any part thereof of the department shall be at any time in the future surrendered to or taken over by the federal government or any agency thereof, the department, with the approval of the department of administration, may lease such equipment and real property to the federal government or such agency, but the title thereto shall remain in the state of Montana.

History: En. as Sec. 11-A of Ch. 137, L. 1937 by Sec. 6, Ch. 233, L. 1943; amd. Sec. 8, Ch. 171, L. 1957; amd. Sec. 19, Ch. 368, L. 1975; amd. Sec. 17, Ch. 343, L. 1977; R.C.M. 1947, 87-130; amd. Sec. 2, Ch. 57, L. 1979; amd. Sec. 1, Ch. 349, L. 1981.

39-51-309. Representation of department and state in court. (1) In any civil action to enforce the provisions of this chapter the department and the state may be represented by any qualified attorney who is employed by the department and is designated by it for this purpose or, at the department's or board's request, by the attorney general.

(2) All criminal actions for violation of any provision of this chapter or of any rules issued pursuant thereto shall be prosecuted by the attorney general of the state or, at his request and under his direction, by the county attorney of the county wherein the crime was committed.

History: En. Sec. 17, Ch. 137, L. 1937; amd. Sec. 8, Ch. 164, L. 1955; amd. Sec. 31, Ch. 368, L. 1975; R.C.M. 1947, 87-146; amd. Sec. 41, Ch. 397, L. 1979; amd. Sec. 1, Ch. 349, L. 1981.

39-51-310. Function of board. The board shall act in a quasi-judicial capacity for the hearing of disputes concerning the administration of Montana's unemployment insurance laws concerning benefits.

History: En. 82A-1008 by Sec. 1, Ch. 272, L. 1971; R.C.M. 1947, 82A-1008(4); amd. Sec. 3, Ch. 314, L. 1987; amd. Sec. 8, Ch. 442, L. 1999.

Compiler's Comments

1999 Amendment: Chapter 442 after "laws" deleted "and disputes arising under Title 39, chapter 71, not" and after "benefits" deleted "regarding whether an individual is an employee or an independent contractor as defined in that chapter". Amendment effective April 23, 1999.

Cross-References

Quasi-judicial boards, 2-15-124.

Part 4
Financial Administration

Part Cross-References

Ex officio State Treasurer, 2-15-1002.

State treasury fund structure, Title 17, ch. 2.

General definitions, 39-51-201.

Employment security account, 39-51-409.

39-51-401. Unemployment insurance fund — establishment and control. There is established separate and apart from all public money or funds of this state a fund in the expendable trust fund type known as the unemployment insurance fund, which must be administered by the department exclusively for the purposes of this chapter. Any reference to the unemployment insurance fund in this code means the unemployment insurance expendable trust fund. All money in the fund must be mingled and undivided. This fund consists of:

(1) all contributions collected under this chapter and payments made in lieu of contributions as provided in 39-51-1124 through 39-51-1126;

(2) interest earned upon any money in the fund;

(3) any property or securities acquired through the use of money belonging to the fund;

(4) all earnings of such property or securities; and

(5) all money credited to this state's account in the unemployment trust fund pursuant to sections 903 and 904 of the Social Security Act (42 U.S.C. 1103 and 1104), as amended.

History: En. Subd. (a), Sec. 9, Ch. 137, L. 1937; amd. Sec. 2, Ch. 190, L. 1945; amd. Sec. 4, Ch. 171, L. 1957; amd. Sec. 206, Ch. 147, L. 1963; amd. Sec. 1, Ch. 88, L. 1971; amd. Sec. 5, Ch. 368, L. 1975; R.C.M. 1947, 87-111; amd. Sec. 2, Ch. 57, L. 1979; amd. Sec. 42,

Ch. 397, L. 1979; amd. Sec. 17, Ch. 685, L. 1979; amd. Sec. 1, Ch. 349, L. 1981; amd. Sec. 21, Ch. 281, L. 1983; amd. Sec. 164, Ch. 42, L. 1997.

39-51-402. Unemployment insurance fund — custodian — accounts and deposits. (1) The commissioner of labor and industry is the ex officio treasurer and custodian of the unemployment insurance fund and shall administer that fund in accordance with this chapter. The commissioner shall maintain within the fund three separate accounts:

(a) a clearing account;
(b) an unemployment trust fund account; and
(c) a benefit account.

(2) All money payable to the unemployment insurance fund, upon receipt by the department, must be immediately deposited in the clearing account. Refunds payable pursuant to 39-51-1110 may be paid from the clearing account. After clearance, all other money in the clearing account must be immediately deposited with the secretary of the treasury of the United States to the credit of the account of this state in the unemployment trust fund, established and maintained pursuant to section 904 of the Social Security Act (42 U.S.C. 1104), as amended.

(3) The benefit account consists of all money requisitioned for the payment of benefits from this state's account in the unemployment trust fund.

(4) Except as otherwise provided, money in the clearing and benefit accounts may be deposited in any bank or public depository in which general funds of the state may be deposited, but a public deposit insurance charge or premium may not be paid out of the unemployment insurance fund.

History: En. Subd. (b), Sec. 9, Ch. 137, L. 1937; amd. Sec. 5, Ch. 171, L. 1957; amd. Sec. 207, Ch. 147, L. 1963; amd. Sec. 6, Ch. 368, L. 1975; R.C.M. 1947, 87-112; amd. Sec. 2, Ch. 57, L. 1979; amd. Sec. 43, Ch. 397, L. 1979; amd. Sec. 1, Ch. 349, L. 1981; amd. Sec. 22, Ch. 281, L. 1983; amd. Sec. 8, Ch. 125, L. 1985; amd. Sec. 165, Ch. 42, L. 1997.

39-51-403. Money to be requisitioned from unemployment trust fund solely for payment of benefits — exception. (1) Money may be requisitioned from this state's account in the unemployment trust fund solely for the payment of benefits and in accordance with regulations prescribed by the department, except that money credited to this state's account pursuant to sections 903 and 904 of the Social Security Act (42 U.S.C. 1103 and 1104), as amended, may also be withdrawn for the payment of expenses for the administration of this chapter and of public employment offices, as provided by this chapter. Money withheld by the department from a benefits payment at the request of an individual or in accordance with the department's rules pertaining to deductions and withholding for federal income tax purposes pursuant to 39-51-2207 or money withheld for repayment of an overissuance of food stamp coupons pursuant to 39-51-2208 must be considered benefits for the purposes of this subsection.

(2) The department shall from time to time requisition from the unemployment trust fund amounts, not exceeding the amounts in this state in the fund, as it considers necessary for the payment of benefits for a reasonable future period. Upon receipt of a requisition, the treasurer shall deposit the money in the benefit account and shall issue warrants for the payment of benefits solely from the benefit account.

(3) Expenditures of money in the benefit account and refunds from the clearing account are not subject to any provisions of law requiring specific appropriations or other formal release by state officers of money in their custody.

(4) Any balance of money requisitioned from the unemployment trust fund that remains unclaimed or unpaid in the benefit account after the expiration of the period for which the sums were requisitioned must be deducted from estimates for and may be used for the payment of benefits during succeeding periods or, in the discretion of the department, must be redeposited with the secretary of the treasury of the United States to the credit of this state's account in the unemployment trust fund, as provided in 39-51-402.

History: En. Subd. (c), Sec. 9, Ch. 137, L. 1937; amd. Sec. 6, Ch. 171, L. 1957; amd. Sec. 7, Ch. 368, L. 1975; R.C.M. 1947, 87-113(a); amd. Sec. 1, Ch. 349, L. 1981; amd. Sec. 166, Ch. 42, L. 1997; amd. Sec. 5, Ch. 60, L. 1997.

39-51-404. Administrative expenses. (1) Money credited to the account of this state in the unemployment trust fund by the secretary of the treasury of the United States pursuant to sections 903 and 904 of the Social Security Act (42 U.S.C. 1103 and 1104), as amended, may be requisitioned and used for the payment of expenses incurred for the administration of this chapter pursuant to a specific appropriation by the legislature if the expenses are incurred and the money is requisitioned after the enactment of an appropriation law that:

(a) specifies the purposes for which the money is appropriated and the amounts appropriated;

(b) limits the period within which the money may be expended to a period ending not more than 2 years after the date of the enactment of the appropriation law; and

(c) limits the amount that may be used during any 12-month period beginning on July 1 and ending on the next June 30 to an amount not exceeding the amount by which the aggregate of the amounts credited to the account of this state pursuant to sections 903 and 904 of the Social Security Act (42 U.S.C. 1103 and 1104), as amended, during the same 12-month period and the 34 preceding 12-month periods exceeds the aggregate of the amounts used pursuant to this section and charged against the amounts credited to the account of this state during any of the 35 12-month periods.

(2) For the purposes of this section, amounts used during any 12-month period must be charged against equivalent amounts that were first credited and that are not already charged, except that an amount used for administration during any 12-month period may not be charged against any amount credited during a 12-month period earlier than the 34th preceding period. Money requisitioned for the payment of expenses of administration pursuant to this section must be deposited in the unemployment insurance administration account but, until expended, must remain a part of the unemployment insurance fund.

(3) The department shall maintain a separate record of the deposit, obligation, expenditure, and return of funds deposited. If any money deposited is for any reason not to be expended for the purpose for which it was appropriated or if it remains unexpended at the end of the period specified by the law appropriating the money, it must be withdrawn and returned to the

secretary of the treasury of the United States for credit to this state's account in the unemployment trust fund.

(4) An assessment equal to 0.13% of all taxable wages provided for in 39-51-1108 and 0.05% of total wages paid by employers not covered by an experience rating must be levied against and paid by all employers. All assessments and investment income must be deposited in the employment security account provided for in 39-51-409.

History: En. Subd. (c), Sec. 9, Ch. 137, L. 1937; amd. Sec. 6, Ch. 171, L. 1957; amd. Sec. 7, Ch. 368, L. 1975; R.C.M. 1947, 87-113(b); amd. Sec. 2, Ch. 57, L. 1979; amd. Sec. 1, Ch. 349, L. 1981; amd. Sec. 1, Ch. 251, L. 1983; amd. Sec. 23, Ch. 281, L. 1983; (4)En. Sec. 1, Ch. 304, L. 1983; amd. Sec. 2, Ch. 461, L. 1985; amd. Sec. 1, Ch. 422, L. 1989; amd. Sec. 1, Ch. 15, Sp. L. January 1992; amd. Sec. 1, Ch. 173, L. 1993; amd. Sec. 167, Ch. 42, L. 1997; amd. Sec. 1, Ch. 399, L. 1999.

Compiler's Comments

1999 Amendment: Chapter 399 in (4) substituted assessment of 0.13% for assessment of 0.1%. Amendment effective October 1, 1999.

Applicability: Section 5, Ch. 399, L. 1999, provided: "[This act] applies to taxable wages paid on or after January 1, 2000."

39-51-405. Signatures required on warrants. All warrants issued by the treasurer for payment pursuant to 39-51-403 or 39-51-404 shall bear the signature of the treasurer and the countersignature of a member of the department or its duly authorized agent for that purpose.

History: En. Subd. (c), Sec. 9, Ch. 137, L. 1937; amd. Sec. 6, Ch. 171, L. 1957; amd. Sec. 7, Ch. 368, L. 1975; R.C.M. 1947, 87-113(c); amd. Sec. 1, Ch. 349, L. 1981.

Cross-References

Warrants for payment of state funds, 17-8-301.

39-51-406. Unemployment insurance administration account. (1) There is an account in the federal special revenue fund to be known as the unemployment insurance administration account. All money that is deposited, appropriated, or paid into this account is appropriated and made available to the department. All money in the account must be expended solely for the purpose of defraying the costs of administration of this chapter and costs of administration of other legislation specifically delegated by the legislature to the department for administration.

(2) All money received and deposited in the account from the United States or any agency of the United States pursuant to section 302, Title III, of the Social Security Act (42 U.S.C. 502) must be expended solely for the purpose and in the amounts found necessary by the secretary of labor for the proper and efficient administration of this chapter.

(3) The account consists of:

(a) all money received from the United States or any agency of the United States pursuant to section 302, Title III, of the Social Security Act (42 U.S.C. 502), as amended;

(b) all money appropriated by the state from the general fund for the purpose of administering this chapter; and

(c) all money, trust funds, supplies, facilities, or services furnished, deposited, paid, and received from:

(i) the United States or any agency of the United States;

(ii) this state or any agency of the state;

(iii) any other state or any of its agencies;
(iv) political subdivisions of the state; or
(v) any other source for administrative expense and purpose.

(4) Notwithstanding any provisions of this section, all money requisitioned and deposited in this account pursuant to 39-51-403 through 39-51-405 must remain part of the unemployment insurance fund and must be used only in accordance with the conditions specified in 39-51-403 through 39-51-405.

(5) All money in this account must be deposited, administered, and disbursed in the same manner and under the same conditions and requirements as is provided by law for other accounts. The balance in this account may not lapse at any time but must be continuously available to the department for expenditure consistent with this chapter.

(6) The state treasurer shall give a separate and additional bond conditioned upon the faithful performance of the treasurer's duties in connection with the unemployment insurance administration account in an amount to be fixed by the department and in a form prescribed by law or approved by the attorney general. The premiums for the bond must be paid from the money in the unemployment insurance administration account.

(7) Any reference to the unemployment insurance administration fund in this code means the unemployment insurance administration account in the federal special revenue fund.

History: En. Subd. (a), Sec. 13, Ch. 137, L. 1937; amd. Sec. 7, Ch. 164, L. 1941; amd. Sec. 4, Ch. 190, L. 1945; amd. Sec. 4, Ch. 164, L. 1955; amd. Sec. 9, Ch. 171, L. 1957; amd. Sec. 208, Ch. 147, L. 1963; amd. Sec. 22, Ch. 368, L. 1975; R.C.M. 1947, 87-133; amd. Sec. 2, Ch. 57, L. 1979; amd. Sec. 1, Ch. 349, L. 1981; amd. Sec. 2, Ch. 277, L. 1983; amd. Sec. 24, Ch. 281, L. 1983; amd. Sec. 1, Ch. 369, L. 1983; amd. Sec. 2, Ch. 15, Sp. L. January 1992; amd. Sec. 61, Ch. 10, L. 1993.

Cross-References

State treasury fund structure, Title 17, ch. 2.

Guaranty, indemnity, and suretyship, Title 28, ch. 11.

39-51-407. Reimbursement of fund by state. This state recognizes its obligation to replace and pledges the faith of this state that funds will be provided in the future and applied to the replacement of any of the money received from the United States or any agency of the United States under Title III of the Social Security Act (now Subchapter III), any unencumbered balances in the unemployment insurance administration account, any money granted to this state pursuant to the provisions of the Wagner-Peyser Act (29 U.S.C. 49, et seq.), and any money made available by the state or its political subdivisions and matched by money granted to this state pursuant to the provisions of the Wagner-Peyser Act that the secretary of labor finds have, because of any action or contingency, been lost or have been expended for purposes other than or in amounts in excess of those found necessary by the secretary of labor for the proper administration of this chapter. The money must be promptly supplied by money furnished by the state of Montana or any of its subdivisions for the use of the department and used only for purposes approved by the secretary of labor. The department shall, if necessary, promptly report to the governor and the governor to the legislature, by a letter to the speaker of the house of representatives and the president of the senate, the amount required for replacement of the money.

History: En. as Subd. (b) of Sec. 13, Ch. 137, L. 1937 by Sec. 7, Ch. 164, L. 1941; amd. Sec. 5, Ch. 164, L. 1955; amd. Sec. 23, Ch. 368, L. 1975; R.C.M. 1947, 87-134; amd. Sec. 2, Ch. 57, L. 1979; amd. Sec. 1, Ch. 349, L. 1981; amd. Sec. 25, Ch. 281, L. 1983; amd. Sec. 4, Ch. 234, L. 1987; amd. Sec. 34, Ch. 112, L. 1991; amd. Sec. 168, Ch. 42, L. 1997.

39-51-408. Advances from federal unemployment trust fund. (1) The department is authorized to apply for advances on behalf of the state of Montana from its account in the federal unemployment trust fund and to accept responsibility for repayment of such advances in accordance with the conditions specified by congress.

(2) (a) The interest cost, if any, from such advances must be assessed against employers subject to experience rating. Interest cost may not be assessed against state or local government employers covered by 39-51-1212 or against nonprofit organizations making payments in lieu of contributions pursuant to 39-51-1124.

(b) An assessment must be made beginning with the calendar year following the calendar year in which it became necessary to apply for an advance from the federal unemployment trust fund and after the interest charges on the advance have been determined. The rate will be determined by the department based upon the interest charges. This rate must be applied to the employer's taxable wages and be submitted in the same manner as regular contributions but as a separate payment.

(c) The amount received must be deposited in the unemployment insurance account and used to pay interest costs. Any surplus must be used to pay benefits. The department shall maintain separate records of deposits, obligations, and expenditures of all money collected pursuant to this section.

History: En. Sec. 1, Ch. 273, L. 1983.

39-51-409. Employment security account. (1) There is an account created in the state special revenue fund called the employment security account.

(2) The department may transfer funds from the account to the unemployment insurance fund account provided for in 39-51-402 upon receiving approval from the budget director that the transfer will not decrease the money in the account below the level appropriated by the legislature to provide employment services programs.

(3) The department may transfer appropriation authority in employment services programs between the federal special revenue and the state special revenue fund types.

History: En. Sec. 2, Ch. 173, L. 1993; amd. Sec. 2, Ch. 399, L. 1999.

Compiler's Comments

1999 Amendment: Chapter 399 in (2) at end and in (3) near middle substituted "employment services programs" for reference to employment office programs; and made minor changes in style. Amendment effective October 1, 1999.

Applicability: Section 5, Ch. 399, L. 1999, provided: "[This act] applies to taxable wages paid on or after January 1, 2000."

Part 5
Governmental Cooperation

Part Cross-References
General definitions, 39-51-201.

39-51-501. State-federal cooperation. (1) In the administration of this chapter, the department shall:

(a) cooperate to the fullest extent consistent with the provisions of this chapter with the secretary of labor, pursuant to the provisions of the Social Security Act, as amended;

(b) make reports in a form and containing the information that the secretary of labor may require and shall comply with the provisions that the secretary of labor may find necessary to ensure the correctness and verification of the reports; and

(c) comply with the regulations prescribed by the secretary of labor governing the expenditures of the sums that are allotted and paid to this state under Title III of the Social Security Act (now Subchapter III), as amended, for the purpose of assisting in the administration of this chapter.

(2) The department shall cooperate with the secretary of labor in the administration of any act of congress establishing unemployment insurance benefits or similar benefits for federal employees and veterans or ex-service personnel of the armed forces of the United States and shall do so in a manner considered advisable and expedient in order to carry out the purpose of this chapter.

(3) The department is authorized to perform any acts, including the execution of agreements and contracts that may be required under and pursuant to any act passed by the congress of the United States, authorizing the extension of unemployment insurance benefits by federal law if the department in its discretion considers it advisable to perform such acts.

(4) Upon request, the department shall furnish to any agency of the United States charged with the administration of public works or assistance through public employment the name, address, ordinary occupation, and employment status of each recipient of benefits and the recipient's rights to further benefits under this chapter.

History: En. Subd. (i), Sec. 11, Ch. 137, L. 1937; amd. Sec. 7, Ch. 171, L. 1957; amd. Sec. 7, Ch. 156, L. 1961; amd. Sec. 17, Ch. 368, L. 1975; R.C.M. 1947, 87-128; amd. Sec. 2, Ch. 57, L. 1979; amd. Sec. 1, Ch. 349, L. 1981; amd. Sec. 169, Ch. 42, L. 1997.

39-51-502. Cooperation with other agencies. (1) The department shall afford reasonable cooperation with any government agency charged with war effort or postwar planning responsibilities or with the administration of any system of unemployment allowances or unemployment assistance or of any program designed to prevent or relieve unemployment.

(2) The department may make and may cooperate with other appropriate state agencies in making studies as to the practicability and probable cost of possible new state-administered social security programs and the relative desirability of state rather than national action in any such field.

(3) The department shall fully cooperate with the agencies of other states and shall make every proper effort within its means to oppose and prevent any further action which would in its judgment tend to effect complete or

substantial federalization of state unemployment insurance funds or state unemployment insurance and employment security programs or any part of the social security program.

History: En. as Sec. 11-B of Ch. 137, L. 1937 by Sec. 6, Ch. 233, L. 1943; amd. Sec. 20, Ch. 368, L. 1975; R.C.M. 1947, 87-131; amd. Sec. 2, Ch. 57, L. 1979; amd. Sec. 1, Ch. 349, L. 1981.

39-51-503. Agreements with railroad retirement board. The department is authorized to cooperate with and enter into agreements with the railroad retirement board with respect to establishment, maintenance, and use of employment service facilities and to make available to the railroad retirement board the records of the department relating to employer's status and contributions received from employers covered by the Railroad Unemployment Insurance Act (45 U.S.C. 351, et seq.), together with employee wage records and other data that the railroad retirement board considers necessary or desirable for the administration of the Railroad Unemployment Insurance Act. Any money received by the department from the railroad retirement board or any other governmental agency with respect to the establishment, maintenance, and use of employment service facilities must be paid into and credited to the proper division of the unemployment insurance administration fund set up and established under 39-51-406 and 39-51-407.

History: En. Sec. 2, Ch. 167, L. 1939; amd. Sec. 9, Ch. 368, L. 1975; R.C.M. 1947, 87-116; amd. Sec. 2, Ch. 57, L. 1979; amd. Sec. 3, Ch. 349, L. 1981; amd. Sec. 170, Ch. 42, L. 1997.

39-51-504. Reciprocal benefit arrangements. (1) The department is hereby authorized to enter into arrangements with the appropriate agencies of other states or the federal government whereby individuals performing services in this and other states for a single employing unit under circumstances not specifically provided for in this chapter or under similar provisions of the unemployment insurance laws of such other states shall be deemed to be engaged in employment performed entirely within this state or within one of such other states and whereby potential rights to benefits accumulated under the unemployment insurance laws of several states or under such a law of the federal government or both may constitute the basis for the payment of benefits through a single appropriate agency under terms which the department finds will be fair and reasonable as to all affected interests and will not result in any substantial loss to the fund.

(2) The department shall participate in any arrangements, approved by the U.S. secretary of labor, with the appropriate agencies of the other states or of the federal government whereby wages or services upon the basis of which an individual may become entitled to benefits under the unemployment insurance law of another state or of the federal government shall be deemed to be wages for employment by employers for benefit purposes, provided that:

(a) in any instance involving the combining of an individual's wages and employment covered under two or more state unemployment insurance laws, that the base period of a single state law will be used;

(b) such combining of wages will not involve the duplicate use of such wage credits; and

(c) such other state agency or agency of the federal government has agreed to reimburse the unemployment insurance fund for such portion of benefits paid under this chapter upon the basis of such wages or services as the department finds will be fair and reasonable as to all affected interests, and whereby the department will reimburse other state or federal agencies charged with the administration of unemployment insurance laws with such reasonable portion of benefits paid under the law of any such other states or of the federal government upon the basis of employment or wages for employment by employers as the department finds will be fair and reasonable to all affected interests. Reimbursements so payable shall be deemed to be benefits for the purposes of this chapter.

(3) The department is hereby authorized to make to other state or federal agencies reimbursements from or to the unemployment insurance fund in accordance with arrangements made pursuant to this section.

History: En. Subd. (j), Sec. 11, Ch. 137, L. 1937; amd. Sec. 3, Ch. 190, L. 1945; amd. Sec. 1, Ch. 91, L. 1971; amd. Sec. 18, Ch. 368, L. 1975; R.C.M. 1947, 87-129; amd. Sec. 2, Ch. 57, L. 1979; amd. Sec. 1, Ch. 349, L. 1981.

39-51-505. Access to governmental records. Upon request by the department, a state or local government agency, including the units of the university system, or a state or local government official or employee shall cooperate by supplying the department with information that would aid in the administration of this chapter. The department may use the information only for administration of this chapter. Any confidential information provided to the department remains confidential and may not be published or open to public inspection unless specifically required in the performance of the employee's duties.

History: En. Sec. 17, Ch. 195, L. 1995.

Cross-References

Right to know, Art. II, sec. 9, Mont. Const.

Public records, Title 2, ch. 6.

Part 6
Records and Reports

Part Cross-References

General definitions, 39-51-201.

39-51-601. Department to maintain wage record. The department shall maintain a record of the wages paid to an individual in accordance with wages earned by him for employment by employers during each quarter.

History: En. Sec. 3 (a), (b), (c), Ch. 137, L. 1937; amd. Sec. 1, Ch. 137, L. 1939; amd. Sec. 1, Ch. 164, L. 1941; amd. Sec. 1, Ch. 245, L. 1947; amd. Sec. 1, Ch. 178, L. 1949; amd. Sec. 1, Ch. 191, L. 1953; amd. Sec. 1, Ch. 238, L. 1955; amd. Sec. 1, Ch. 140, L. 1957; amd. Sec. 1, Ch. 156, L. 1961; amd. Sec. 1, Ch. 269, L. 1963; amd. Sec. 1, Ch. 4, Ex. L. 1969; amd. Sec. 1, Ch. 169, L. 1971; amd. Sec. 1, Ch. 394, L. 1973; amd. Sec. 1, Ch. 400, L. 1975; amd. Sec. 1, Ch. 528, L. 1977; R.C.M. 1947, 87-103(f); amd. Sec. 1, Ch. 349, L. 1981.

39-51-602. Method to be used by department in keeping wage records. Wage records kept by the department for the purposes of this chapter must be kept on the basis of wages paid, except that for the purposes of determining benefit eligibility and the amount and duration of benefits payable, wages, including lump-sum payments of accrued wages, must be assigned to periods of time as determined in accordance with rules adopted by the department.

History: **En. Subd. (n) to (r), Sec. 19, Ch. 137, L. 1937; amd. Sec. 6, Ch. 137, L. 1939; amd. Sec. 10, Ch. 164, L. 1941; amd. Sec. 5, Ch. 233, L. 1943; amd. Sec. 6, Ch. 190, L. 1945; amd. Sec. 3, Ch. 238, L. 1955; amd. Sec. 12, Ch. 171, L. 1957; amd. Sec. 11, Ch. 156, L. 1961; amd. Sec. 4, Ch. 269, L. 1963; amd. Sec. 1, Ch. 200, L. 1969; amd. Sec. 33, Ch. 368, L. 1975; amd. Sec. 1, Ch. 115, L. 1977; R.C.M. 1947, 87-149(part); amd. Sec. 1, Ch. 349, L. 1981; amd. Sec. 6, Ch. 618, L. 1989; amd. Sec. 6, Ch. 373, L. 1991.**

39-51-603. Employing unit to keep records and make reports. (1) Each employing unit shall keep true and accurate work records containing the information that the department may prescribe. Those records must be open to inspection and audit and may be copied by the department or its authorized representative at any reasonable time and as often as may be necessary. An employing unit that maintains its records outside Montana shall furnish a copy of those records to the department at the employing unit's expense or shall pay the department for the costs associated with conducting the audit outside Montana.

(2) The department and the presiding officer of any appeal tribunal may require from any employing unit any sworn or unsworn reports with respect to persons employed by it that the department considers necessary for the effective administration of this chapter.

(3) Information obtained from any individual under this chapter must, except to the individual claimant to the extent necessary for the proper presentation of a claim, be held confidential and may not be published or be open to public inspection, except to public employees in the performance of their public duties, in any manner revealing the individual's or employing unit's identity, but any claimant or the claimant's legal representative at a hearing before the board or appeal tribunal must be supplied with information from the records to the extent necessary for the proper presentation of the claim.

(4) Any employee or member of the department who violates any provision of this section shall be fined not less than $20 or more than $200 or shall be imprisoned for not longer than 90 days, or both.

History: **En. Subd. (e), Sec. 11, Ch. 137, L. 1937; amd. Sec. 1, Ch. 144, L. 1974; amd. Sec. 15, Ch. 368, L. 1975; R.C.M. 1947, 87-124; amd. Sec. 1, Ch. 349, L. 1981; amd. Sec. 7, Ch. 373, L. 1991; amd. Sec. 5, Ch. 195, L. 1995.**

39-51-604. Exemption. An exemption granted under 39-71-401(3) by the department that a particular employee is an independent contractor or that a particular employment is exempt from the provisions of this chapter must be reported to the state compensation insurance fund.

History: **En. Sec. 3, Ch. 573, L. 1991; amd. Sec. 14, Ch. 630, L. 1993.**

Cross-References

Employments covered and employments exempted, 39-71-401.

Parts 7 through 10 reserved

Part 11
Employer Contributions

Part Cross-References

General definitions,39-51-201, 39-51-1121.

39-51-1101. Commencement and termination of coverage under chapter. (1) Any employing unit which is or becomes an employer subject to this chapter within any calendar year shall be subject to this chapter during the whole of such calendar year, except that this subsection shall not apply to an employing unit electing coverage as provided for in 39-51-1102.

(2) Except as otherwise provided in 39-51-1102, an employing unit shall cease to be an employer subject to this chapter only as of January 1 of any calendar year only if it files with the department prior to the last day of February of such year a written application for termination of coverage and the department finds that the total wages payable for employment by said employer in the preceding calendar year did not equal or exceed the amount of wages required under 39-51-202 to be considered an employer subject to this chapter. For the purpose of this subsection, the two or more employing units mentioned in 39-51-202(4) or (5) shall be treated as a single employing unit.

History: En. Sec. 8, Ch. 137, L. 1937; amd. Sec. 4, Ch. 137, L. 1939; amd. Sec. 5, Ch. 164, L. 1941; amd. Sec. 1, Ch. 37, L. 1969; amd. Sec. 1, Ch. 103, L. 1971; amd. Sec. 1, Ch. 181, L. 1973; amd. Sec. 2, Ch. 323, L. 1975; R.C.M. 1947, 87-110(a), (b); amd. Sec. 1, Ch. 349, L. 1981; amd. Sec. 5, Ch. 234, L. 1987; amd. Sec. 8, Ch. 373, L. 1991.

39-51-1102. Election by employing units not otherwise subject to chapter. An employing unit not otherwise subject to this chapter or any employing unit for which services are performed that do not constitute employment as defined in this chapter may file with the department a written election that all such services performed by individuals in its employ in one or more distinct establishments or places of business shall be deemed to constitute employment for all purposes of this chapter for not less than 2 calendar years. Upon the written approval of such election by the department, such services shall be deemed to constitute employment subject to this chapter from and after the date stated in such approval. Such services shall cease to be deemed employment subject hereto as of January 1 of any calendar year subsequent to such 2 calendar years only if at least 30 days prior to such January 1 such employing unit has filed with the department a written notice to that effect.

History: En. Sec. 8, Ch. 137, L. 1937; amd. Sec. 4, Ch. 137, L. 1939; amd. Sec. 5, Ch. 164, L. 1941; amd. Sec. 1, Ch. 37, L. 1969; amd. Sec. 1, Ch. 103, L. 1971; amd. Sec. 1, Ch. 181, L. 1973; amd. Sec. 2, Ch. 323, L. 1975; R.C.M. 1947, 87-110(c); amd. Sec. 1, Ch. 349, L. 1981.

39-51-1103. Contributions by employers required — payments in lieu thereof authorized for certain employers. (1) Contributions shall accrue and become payable by each employer for each calendar year in which he is subject to this chapter with respect to wages, as defined in 39-51-201, paid for employment, as defined in this chapter, occurring during such calendar year.

(2) Such contributions shall become due and be paid by each employer to the department for the fund in accordance with such regulations as the department may prescribe and shall not be deducted in whole or in part from the wages of individuals in his employ.

(3) In the payment of any contributions, a fractional part of a cent shall be disregarded unless it amounts to one-half cent or more, in which case it shall be increased to 1 cent.

(4) Nonprofit organizations defined in section 501(c)(3) of the federal Internal Revenue Code and which are exempt from tax under section 501(a) of such code may elect to make payments in lieu of contributions.

(5) The state and its political subdivisions, effective January 1, 1977, may elect to make payments in lieu of contributions or pay under a special contributions plan established for governmental entities only.

History: En. Sec. 7, Ch. 137, L. 1937; amd. Sec. 3, Ch. 137, L. 1939; amd. Sec. 4, Ch. 164, L. 1941; amd. Sec. 2, Ch. 245, L. 1947; amd. Sec. 5, Ch. 191, L. 1953; amd. Sec. 2, Ch. 164, L. 1955; amd. Sec. 3, Ch. 171, L. 1957; amd. Sec. 5, Ch. 156, L. 1961; amd. Sec. 3, Ch. 269, L. 1963; amd. Sec. 4, Ch. 4, Ex. L. 1969; amd. Sec. 1, Ch. 117, L. 1971; amd. Sec. 1, Ch. 163, L. 1973; amd. Sec. 1, Ch. 430, L. 1975; amd. Sec. 1, Ch. 165, L. 1977; R.C.M. 1947, 87-109(part); amd. Sec. 18, Ch. 685, L. 1979; amd. Sec. 1, Ch. 349, L. 1981; amd. Sec. 9, Ch. 125, L. 1985.

39-51-1104. Duty and liability of contractor and subcontractor, respectively, in regard to taxes, penalties, and interest owed by subcontractor. (1) Any contractor who is or becomes an employer under the provisions of this chapter who contracts with any subcontractor who also is or becomes an employer under the provisions of this chapter shall withhold sufficient money on the contract to guarantee that all taxes, penalties, and interest are paid upon completion of the contract.

(2) It shall be the duty of any subcontractor who is or becomes an employer under the provisions of this chapter to furnish the contractor with a certification issued by the department, prior to final payment for the particular job, stating that said subcontractor is current and in full compliance with the provisions of this chapter.

(3) Failure to comply with the provisions of this section shall render the contractor directly liable for all taxes, penalties, and interest due from the subcontractor on the particular job, and the administrator has all of the remedies of collection against the contractor under the provisions of this chapter as though the services in question were performed directly for the contractor.

History: En. Subd. (b), Sec. 14, Ch. 137, L. 1937; amd. Sec. 5, Ch. 137, L. 1939; amd. Sec. 8, Ch. 164, L. 1941; amd. Sec. 1, Ch. 36, L. 1969; amd. Sec. 1, Ch. 105, L. 1975; amd. Sec. 25, Ch. 368, L. 1975; amd. Sec. 1, Ch. 386, L. 1977; R.C.M. 1947, 87-136(3); amd. Sec. 1, Ch. 349, L. 1981; amd. Sec. 9, Ch. 373, L. 1991.

39-51-1105. Liability of corporate officers for taxes, penalties, and interest owed by corporation. (1) The officer of a corporation whose responsibility it is to pay the taxes, penalties, and interest, as provided by 39-51-1103(1) and (2) and 39-51-1125(1) and (2), is liable for the taxes, penalties, and interest due.

(2) (a) The department shall consider the officer of the corporation individually liable with the corporation for filing reports and unpaid taxes, penalties, and interest upon a determination that the corporate officer:

(i) possessed the responsibility to file reports and pay taxes on behalf of the corporation; and

(ii) possessed the responsibility on behalf of the corporation to direct the filing of reports or payment of other corporate obligations and exercised the responsibility that resulted in failure to file reports or pay taxes due.

(b) The department is not limited to considering the elements set forth in subsection (2)(a) to establish individual liability and may consider any other available information.

(3) In the case of a corporate bankruptcy, the liability of the individual remains unaffected by the discharge of penalty and interest against the corporation. The individual is liable for any amount of taxes, penalties, and interest unpaid by the corporation.

(4) For determining liability for unemployment insurance taxes, penalties, and interest owed, a member-managed limited liability company must be treated as a partnership, with liability for taxes, penalties, and interest owed extending to each member.

(5) For determining liability for unemployment insurance taxes, penalties, and interest owed by a manager-managed limited liability company, the managers of the limited liability company are jointly and severally liable for any taxes, penalties, and interest owed.

History: En. Subd. (b), Sec. 14, Ch. 137, L. 1937; amd. Sec. 5, Ch. 137, L. 1939; amd. Sec. 8, Ch. 164, L. 1941; amd. Sec. 1, Ch. 36, L. 1969; amd. Sec. 1, Ch. 105, L. 1975; amd. Sec. 25, Ch. 368, L. 1975; amd. Sec. 1, Ch. 386, L. 1977; R.C.M. 1947, 87-136(4); amd. Sec. 1, Ch. 349, L. 1981; amd. Sec. 10, Ch. 373, L. 1991; amd. Sec. 12, Ch. 529, L. 1995; amd. Sec. 21, Ch. 491, L. 1997.

39-51-1106. Repealed. Sec. 21, Ch. 685, L. 1979.

History: En. Sec. 7, Ch. 137, L. 1937; amd. Sec. 3, Ch. 137, L. 1939; amd. Sec. 4, Ch. 164, L. 1941; amd. Sec. 2, Ch. 245, L. 1947; amd. Sec. 5, Ch. 191, L. 1953; amd. Sec. 2, Ch. 164, L. 1955; amd. Sec. 3, Ch. 171, L. 1957; amd. Sec. 5, Ch. 156, L. 1961; amd. Sec. 3, Ch. 269, L. 1963; amd. Sec. 4, Ch. 4, Ex. L. 1969; amd. Sec. 1, Ch. 117, L. 1971; amd. Sec. 1, Ch. 163, L. 1973; amd. Sec. 1, Ch. 430, L. 1975; amd. Sec. 1, Ch. 165, L. 1977; R.C.M. 1947, 87-109(part); amd. Sec. 2, Ch. 57, L. 1979.

39-51-1107. Repealed. Sec. 21, Ch. 685, L. 1979.

History: En. Sec. 7, Ch. 137, L. 1937; amd. Sec. 3, Ch. 137, L. 1939; amd. Sec. 4, Ch. 164, L. 1941; amd. Sec. 2, Ch. 245, L. 1947; amd. Sec. 5, Ch. 191, L. 1953; amd. Sec. 2, Ch. 164, L. 1955; amd. Sec. 3, Ch. 171, L. 1957; amd. Sec. 5, Ch. 156, L. 1961; amd. Sec. 3, Ch. 269, L. 1963; amd. Sec. 4, Ch. 4, Ex. L. 1969; amd. Sec. 1, Ch. 117, L. 1971; amd. Sec. 1, Ch. 163, L. 1973; amd. Sec. 1, Ch. 430, L. 1975; amd. Sec. 1, Ch. 165, L. 1977; R.C.M. 1947, 87-109(b)(3).

39-51-1108. Amount of wages per employee subject to contribution. (1) Payment of contributions shall apply only to wages paid up to and including the amount specified in this section by an employer to an employee with respect to employment.

(2) The taxable wage base for each year is the greater of 80% of the average annual wage as determined under 39-51-2201 (rounded to the nearest $100) during the calendar year immediately preceding the most recently completed calendar year, or the amount of taxable wage base specified in the Federal Unemployment Tax Act.

History: En. Sec. 7, Ch. 137, L. 1937; amd. Sec. 3, Ch. 137, L. 1939; amd. Sec. 4, Ch. 164, L. 1941; amd. Sec. 2, Ch. 245, L. 1947; amd. Sec. 5, Ch. 191, L. 1953; amd. Sec. 2, Ch. 164, L. 1955; amd. Sec. 3, Ch. 171, L. 1957; amd. Sec. 5, Ch. 156, L. 1961; amd. Sec. 3, Ch. 269, L. 1963; amd. Sec. 4, Ch. 4, Ex. L. 1969; amd. Sec. 1, Ch. 117, L. 1971; amd. Sec. 1, Ch. 163, L. 1973; amd. Sec. 1, Ch. 430, L. 1975; amd. Sec. 1, Ch. 165, L. 1977; R.C.M. 1947, 87-109(d); amd. Sec. 8, Ch. 685, L. 1979; amd. Sec. 2, Ch. 371, L. 1985.

39-51-1109. Tax appeals — procedure. (1) A decision, determination, or redetermination of the department involving an employer-employee relationship or the charging of benefit payments to employers is final unless an interested party entitled to notification submits a written appeal of the decision, determination, or redetermination. The appeal must be made in the same manner as provided in 39-71-415.

(2) A decision, determination, or redetermination involving contribution liability, contribution rate, application for refund, subject wages, or other tax-related issues must be issued by the department of revenue as provided in Title 15, chapter 1, part 2, and 15-30-257, if applicable. The decision is final unless an interested party entitled to notification follows the uniform dispute review procedures as prescribed in 15-1-211 and 15-30-257, if applicable.

History: En. Sec. 7, Ch. 137, L. 1937; amd. Sec. 3, Ch. 137, L. 1939; amd. Sec. 4, Ch. 164, L. 1941; amd. Sec. 2, Ch. 245, L. 1947; amd. Sec. 5, Ch. 191, L. 1953; amd. Sec. 2, Ch. 164, L. 1955; amd. Sec. 3, Ch. 171, L. 1957; amd. Sec. 5, Ch. 156, L. 1961; amd. Sec. 3, Ch. 269, L. 1963; amd. Sec. 4, Ch. 4, Ex. L. 1969; amd. Sec. 1, Ch. 117, L. 1971; amd. Sec. 1, Ch. 163, L. 1973; amd. Sec. 1, Ch. 430, L. 1975; amd. Sec. 1, Ch. 165, L. 1977; R.C.M. 1947, 87-109(e); amd. Sec. 44, Ch. 397, L. 1979; amd. Sec. 1, Ch. 349, L. 1981; amd. Sec. 10, Ch. 125, L. 1985; amd. Sec. 6, Ch. 234, L. 1987; amd. Sec. 4, Ch. 314, L. 1987; amd. Sec. 1, Ch. 302, L. 1989; amd. Sec. 7, Ch. 195, L. 1995; amd. Sec. 22, Ch. 491, L. 1997; amd. Sec. 5, Ch. 36, L. 1999; amd. Sec. 9, Ch. 442, L. 1999.

Compiler's Comments

1999 Amendments — Composite Section: Chapter 36 in (2) near middle of second sentence after "uniform" substituted "dispute" for "tax". Amendment effective February 24, 1999.

Chapter 442 in (1) at end of second sentence substituted "39-71-415" for "39-51-2402 for the appeal of a decision relating to a claim for unemployment insurance benefits. Statutory rules of evidence and civil procedure do not apply to a hearing on the appeal. A hearing may be conducted by telephone or by videoconference. The decision of the appeals referee and any subsequent appeal must be made in the same manner as prescribed in 39-51-2403 through 39-51-2410." Amendment effective April 23, 1999.

Applicability: Section 6, Ch. 36, L. 1999, provided: "[This act] applies to disputes arising with the department after June 30, 1999."

39-51-1110. Refunds to employers. (1) If an employer claims an adjustment or the department or its delegate, as provided in 39-51-301, determines through an examination of the employer's account that the employer has overpaid the amount due, the amount of the overpayment must be applied to future unemployment insurance obligations or must be refunded to the employer. The credit or refund may be allowed only if the claim is filed, or the determination is made, within a 5-year period after the date on which any taxes, penalty, or interest became due or within one year from the date the payment is made, whichever is later. The department or its delegate pursuant to 39-51-301(5), shall credit or refund the amount to the employer, without interest.

(2) If the department or its delegate pursuant to 39-51-301(5), determines that an employer has paid taxes to this state under this chapter but the taxes should have been paid to another state under a similar act of the other state, a transfer of the taxes to the other state must be made upon discovery or, upon proof of payment that the other state has been fully paid, then a refund to the employer must be made upon application without limitation of time.

(3) If this chapter is not certified by the secretary of labor under 26 U.S.C. 3304 for any year, then refunds must be made of all taxes required under this chapter from employers for that year.

History: En. Subd. (d), Sec. 14, Ch. 137, L. 1937; amd. Sec. 5, Ch. 137, L. 1939; amd. Sec. 8, Ch. 164, L. 1941; amd. Sec. 3, Ch. 233, L. 1943; amd. Sec. 6, Ch. 164, L. 1955; amd. Sec. 10, Ch. 171, L. 1957; amd. Sec. 26, Ch. 368, L. 1975; R.C.M. 1947, 87-138; amd. Sec.

1, Ch. 349, L. 1981; amd. Sec. 11, Ch. 373, L. 1991; amd. Sec. 171, Ch. 42, L. 1997; amd. Sec. 23, Ch. 491, L. 1997.

39-51-1111 through 39-51-1120 reserved.

39-51-1121. Definitions. As used in this part and part 12, the following definitions apply:

(1) "Computation date" means the reporting period ending September 30 preceding the calendar year for which a covered employer's contribution rate is effective.

(2) "Cutoff date" means October 31 immediately following the computation date. The department may extend the cutoff date in meritorious cases.

(3) "Deficit employer" means an employer who is subject under this chapter and who has established a record of accumulated benefits charged to the employer's account in excess of the employer's accumulated contributions paid as of the cutoff date.

(4) "Eligible employer" means an employer who has been subject under this chapter for the 3 fiscal years immediately preceding the computation date and who has:

(a) established a record of accumulated contributions in excess of benefits charged to the employer's account; and

(b) paid wages in at least 1 of the 8 calendar quarters preceding the computation date.

(5) "Fiscal year" means the four consecutive calendar quarters ending on September 30.

(6) "Governmental entities" means the state or any political subdivision of the state or an instrumentality of the state or a political subdivision, including any employing unit funded directly by tax levies.

(7) "New employer" means an employer who:

(a) has not been subject to the provisions of this chapter for the 3 fiscal years immediately preceding the computation date; and

(b) has established a record of accumulated contributions in excess of benefits charged to the employer's account.

(8) "Taxable wage base" means the amount of wages subject to contributions and to assessments under 39-51-404(4) for each calendar year. Payment of contributions and of assessments under 39-51-404(4) may apply only to wages paid up to and including the amount specified in 39-51-1108.

History: En. Secs. 1, 2, Ch. 685, L. 1979; amd. Sec. 1, Ch. 3, L. 1981; amd. Sec. 1, Ch. 349, L. 1981; amd. Sec. 7, Ch. 234, L. 1987; amd. Sec. 7, Ch. 618, L. 1989; amd. Sec. 20, Ch. 373, L. 1991.

39-51-1122. Treatment of minor irregularities in determination of eligible employer status. For the purpose of determining if a covered employer is an eligible employer, delinquencies of a minor nature may be disregarded if it is shown to the satisfaction of the department that the covered employer acted in good faith and that forfeiture of a reduced contribution rate because of such minor delinquency would be inequitable.

History: En. Sec. 3, Ch. 685, L. 1979; amd. Sec. 1, Ch. 349, L. 1981.

39-51-1123. Rates of contributions. All covered employers, except governmental entities and those qualified and electing to make payments in lieu of contributions, shall pay contributions at rates assigned annually by the department.

History: **En. Sec. 4, Ch. 685, L. 1979; amd. Sec. 1, Ch. 349, L. 1981.**

39-51-1124. Procedure for election to make payments in lieu of contributions. (1) Any nonprofit organization defined in 39-51-1103 or governmental entity electing to become liable for payments in lieu of contributions must file a written notice of its election with the department not later than 30 days immediately following the date of the determination of subjectivity to this chapter. This election shall be for a period of not less than 2 years.

(2) Any nonprofit organization defined in 39-51-1103 or governmental entity which has been paying contributions for at least 2 taxable years may change to payments in lieu of contributions by filing a written notice to that effect with the department within 30 days before the beginning of the taxable year for which the change is effective.

History: **En. Sec. 5, Ch. 685, L. 1979; amd. Sec. 1, Ch. 349, L. 1981.**

39-51-1125. Computation of payments in lieu of contributions. (1) After June 30, 1987, qualified employers electing to make payments in lieu of contributions shall pay into the fund an amount equivalent to the full amount of regular benefits plus the state's share of extended benefits paid to individuals based on wages paid by the employing unit. After December 31, 1978, governmental entities shall pay the full amount of extended benefits.

(2) If benefits paid an individual are based on wages paid by both the employer and one or more other employers, the amount payable by any one employer to the fund bears the same ratio to total benefits paid to the individual as the base period wages paid to the individual by such employer bear to the total amount of base period wages paid to the individual by all the individual's base period employers.

(3) If the base period wages of an individual include wages from more than one such employer, the amount to be paid into the fund with respect to the benefits paid to the individual shall be prorated among the liable employers in proportion to the wages paid to the individual by each such employer during the base period.

(4) The amount of payment required from employers shall be ascertained by the department monthly and becomes due and payable by the employer quarterly as directed in this chapter. Penalty and interest for delinquency shall be assessed such employers as specified in 39-51-1301.

(5) A payment may not be required under this section with respect to benefits paid to an individual if the qualified employer continues to provide employment to the individual with no reduction in hours or wages.

History: **En. Sec. 6, Ch. 685, L. 1979; amd. Sec. 1, Ch. 349, L. 1981; amd. Sec. 8, Ch. 234, L. 1987; amd. Sec. 21, Ch. 373, L. 1991.**

39-51-1126. Termination of election to make payments in lieu of contributions. (1) Any nonprofit organization or governmental entity may terminate its election to make payments in lieu of contributions after 2 years from the effective date of such election by filing a written notice with the department not later than 30 days prior to the beginning of the taxable year for which the termination is effective.

(2) If a nonprofit organization or governmental entity is delinquent in making payments in lieu of contributions, the department may terminate the election to make payments in lieu of contributions as of the beginning of the next taxable year, and the termination is effective for that and the next taxable year.

History: En. Sec. 7, Ch. 685, L. 1979; amd. Sec. 1, Ch. 349, L. 1981.

39-51-1127 through 39-51-1130 reserved.

39-51-1131. Terminated. Sec. 12, Ch. 371, L. 1985.

History: En. Sec. 1, Ch. 371, L. 1985.

Part 12

Employer Classification and Experience Rating

Part Cross-References

General definitions, 39-51-201, 39-51-1121.

39-51-1201 through 39-51-1205. Repealed. Sec. 21, Ch. 685, L. 1979.

Compiler's Comments

Histories of Repealed Sections:

39-51-1201 through 39-51-1205. En. Sec. 7, Ch. 137, L. 1937; amd. Sec. 3, Ch. 137, L. 1939; amd. Sec. 4, Ch. 164, L. 1941; amd. Sec. 2, Ch. 245, L. 1947; amd. Sec. 5, Ch. 191, L. 1953; amd. Sec. 2, Ch. 164, L. 1955; amd. Sec. 3, Ch. 171, L. 1957; amd. Sec. 5, Ch. 156, L. 1961; amd. Sec. 3, Ch. 269, L. 1963; amd. Sec. 4, Ch. 4, Ex. L. 1969; amd. Sec. 1, Ch. 117, L. 1971; amd. Sec. 1, Ch. 163, L. 1973; amd. Sec. 1, Ch. 430, L. 1975; amd. Sec. 1, Ch. 165, L. 1977; R.C.M. 1947, 87-109.

39-51-1206. Department to provide for notification of employers of their classification and contribution rate. The department shall by regulation provide for the proper notification of employers of the classification and rate of contribution applicable to their accounts. Such notification shall be final for all purposes unless and until such employer files a written request with the department for a redetermination or hearing thereon within 30 days after receipt of such notice.

History: En. Sec. 7, Ch. 137, L. 1937; amd. Sec. 3, Ch. 137, L. 1939; amd. Sec. 4, Ch. 164, L. 1941; amd. Sec. 2, Ch. 245, L. 1947; amd. Sec. 5, Ch. 191, L. 1953; amd. Sec. 2, Ch. 164, L. 1955; amd. Sec. 3, Ch. 171, L. 1957; amd. Sec. 5, Ch. 156, L. 1961; amd. Sec. 3, Ch. 269, L. 1963; amd. Sec. 4, Ch. 4, Ex. L. 1969; amd. Sec. 1, Ch. 117, L. 1971; amd. Sec. 1, Ch. 163, L. 1973; amd. Sec. 1, Ch. 430, L. 1975; amd. Sec. 1, Ch. 165, L. 1977; R.C.M. 1947, 87-109(part); amd. Sec. 1, Ch. 349, L. 1981.

39-51-1207 through 39-51-1210 reserved.

39-51-1211. Definitions. The definitions set forth in 39-51-1121 apply to this part.

History: En. 39-51-1211 by Code Commissioner, 1979.

39-51-1212. Experience rating for governmental entities. (1) Governmental entities newly covered under this chapter after December 31, 1974, shall make payments for the period prior to July 1, 1977, equal to 0.4% of total wages paid employees for services in employment during the calendar quarter and for the period after July 1, 1977, shall make payments at the median rate.

(2) The rates of governmental entities who have accumulated experience rating credits shall be adjusted annually as follows with each governmental entity assigned a rate based upon:

(a) its benefit cost experience, to be arrived at by dividing the total sum of benefits charged to the employer's account for all past periods which are completed transactions by December 31 by total wages from date of subjectivity of the employing unit through December 31; and

(b) the benefit cost for all past years of governmental entities electing to pay contributions compared with total payrolls reported for all past years by these governmental entities used as a median, with the rates so fixed using the median that the rates will, when applied to the total annual payroll for subject governmental entities, yield total paid contributions equaling approximately the total benefit costs.

(3) New governmental entities electing to pay contributions shall be assigned the median rate for the year in which they become subject.

(4) At no time may the minimum rate be less than 0.1% or the maximum rate be greater than 1.5%. The rates are to be graduated at one-tenth intervals.

(5) In the event benefit charges exceed contributions paid in the last 2 completed fiscal years, governmental entities' rates will be adjusted by increasing all rates to the next higher schedule.

(6) The computed rate is effective July 1 of each year.

(7) Governmental entities must be charged for their share of the total benefits paid to a claimant if the governmental entity contributed wages during the claimant's base period. The benefit charged must be based on the percentage of wages paid by the governmental entity as compared to the total wages paid by all employers in the claimant's base period.

(8) A payment may not be required under this section with respect to benefits paid to an individual if the governmental employer continues to provide employment to the individual with no reduction in hours or wages.

History: En. Sec. 9, Ch. 685, L. 1979; amd. Sec. 1, Ch. 50, L. 1989; amd. Sec. 22, Ch. 373, L. 1991.

39-51-1213. Classification of employers for experience rating purposes. (1) The department shall for each calendar year classify employers in accordance with their actual experience in the payment of contributions and with respect to benefits charged against their accounts, with contribution rates reflecting benefit experience. Each employer's rate for a calendar year must be determined on the basis of the employer's record as of October 1 of the preceding calendar year.

(2) In making the classification, each eligible and deficit employer's contribution rate is determined in the manner set forth below:

(a) Each employer is given an "experience factor", which is contributions paid since October 1, 1981, minus benefits charged on each employer's account since October 1, 1981, divided by the employer's average annual taxable payroll rounded to the next lower dollar amount for the 3 fiscal years immediately preceding the computation date. The computation of the "experience factor" must be to six decimal places.

(b) Schedules must be prepared listing all eligible and deficit employers in inverse numerical order of their experience factors. There must be listed on the schedules for each employer in addition to the experience factor:

(i) the amount of the employer's taxable payroll for the fiscal year ending on the computation date; and

(ii) the cumulative total consisting of the sum of the employer's taxable payroll for the fiscal year ending on the computation date and the corresponding taxable payrolls for all other employers preceding that employer on the schedules.

(3) The cumulative taxable payroll amounts listed on the schedules provided for in 39-51-1218 must be segregated into groups that will yield approximately the average tax rate according to the tax schedule assigned for that particular taxable year. Each group must be identified by the rate class number listed in the table that represents the percentage limits of each group. Each employer on the schedules is assigned that contribution rate opposite that employer's rate class for the tax schedule in effect for the taxable year.

(4) (a) If the grouping of rate classes requires the inclusion of exactly one-half of an employer's taxable payroll, the employer is assigned the lower of the two rates designated for the two classes in which the halves of that employer's taxable payroll are required.

(b) If the group of rate classes requires the inclusion of a portion other than exactly one-half of an employer's taxable payroll, the employer is assigned the rate designated for the class in which the greater part of that employer's taxable payroll is required.

(c) If one or more employers on the schedules have experience factors identical to that of the last employer included in a particular rate class, all such employers are included in and assigned the contribution rate specified for the class, notwithstanding the provisions of 39-51-1214.

(5) If the taxable payroll amount, the experience factor, or both of any eligible or deficit employer listed on the schedules is changed, the employer is placed in that position on the schedules that the employer would have occupied had that employer's taxable payroll amount or experience factor as changed been used in determining that employer's position in the first instance. However, the change does not affect the position or rate classification of any other employer listed on the schedules and does not affect the rate determination for previous years.

(6) An employer who has not filed all required payroll reports or paid all taxes, penalties, and interest due by the cutoff date must be assigned a contribution rate in effect for the taxable year for the employer's classification as an eligible, deficit, or new employer, plus an additional assessment of 50% of the employer's assigned contribution rate, rounded to the nearest 1/100 of 1%.

History: En. Sec. 10, Ch. 685, L. 1979; amd. Sec. 2, Ch. 3, L. 1981; amd. Sec. 1, Ch. 349, L. 1981; amd. Sec. 168, Ch. 575, L. 1981; amd. Sec. 3, Ch. 371, L. 1985; amd. Sec. 9, Ch. 234, L. 1987; amd. Sec. 23, Ch. 373, L. 1991; amd. Sec. 6, Ch. 60, L. 1997; amd. Sec. 3, Ch. 399, L. 1999.

Compiler's Comments

1999 Amendment: Chapter 399 in (6) at end substituted "1/100% of 1%" for "1/10% of 1%". Amendment effective October 1, 1999.

Applicability: Section 5, Ch. 399, L. 1999, provided: "[This act] applies to taxable wages paid on or after January 1, 2000."

39-51-1214. Benefit payments chargeable to employer experience rating accounts. (1) Except for cost reimbursement, benefits paid must be charged to the account of each of the claimant's base period employers. The benefit charged must be based on the percentage of wages paid by the employer as compared to the total wages paid by all employers in the claimant's base period.

(2) A charge may not be made to the account of a covered employer with respect to benefits paid under the following situations:

(a) if paid to a worker who terminated services voluntarily without good cause attributable to a covered employer or who had been discharged for misconduct in connection with services;

(b) if paid in accordance with the extended benefit program triggered by either national or state indicators;

(c) if the base period employer continues to provide employment with no reduction in hours or wages;

(d) if benefits are paid to claimants who are in training approved under 39-51-2307; or

(e) if the base period employer is ordered to state or federal active duty in the national guard or reserves.

History: En. Sec. 11, Ch. 685, L. 1979; amd. Sec. 3, Ch. 3, L. 1981; amd. Sec. 2, Ch. 50, L. 1989; amd. Sec. 24, Ch. 373, L. 1991; amd. Sec. 1, Ch. 86, L. 1993.

39-51-1215. Maintenance of experience rating records. An experience rating record shall be maintained for each covered employer. The record is credited with all contributions which the covered employer has paid since October 1, 1981. The record is also charged with the amount of benefits paid which are chargeable to the covered employer's account since October 1, 1981. Nothing in this section grants any covered employer or individual in his service a priority with respect to any claim or right because of amounts paid by the covered employer into the employment security fund.

History: En. Sec. 12, Ch. 685, L. 1979; amd. Sec. 4, Ch. 3, L. 1981; amd. Sec. 4, Ch. 371, L. 1985.

39-51-1216. Experience rating record voided when account inactive. Whenever an employer whose coverage has been terminated because he has ceased to do business or because he has not covered employment for a period of 3 years becomes a covered employer, he is considered a new employer and he is not to be credited with his previous experience for the purpose of computing any future "experience factor".

History: En. Sec. 13, Ch. 685, L. 1979.

39-51-1217. Schedule of rates assigned based on trust fund reserve. (1) The rate schedule for each calendar year is assigned based upon the ratio of the trust fund balance as of October 31 prior to the rate year to total wages in covered employment for the 12-month period ending June 30 prior to the computation date.

(2) The ratio at the top of each tax schedule in the tax table shown in 39-51-1218 represents the minimum fund level required for a specific tax schedule to be in effect.

(3) Employer rates are assigned in accord with the rates provided in each schedule for eligible and deficit employers, based upon their experience as defined in this section.

(4) For the calendar year 1990 and each year thereafter, any employer classified as a new employer must be assigned a rate equal to the average rate of contributions paid by employers in the same major industrial classification

for the calendar year preceding the computation date, plus an adjustment for the difference between the average tax rate assigned for the previous calendar year and the average rate in effect for the current calendar year. At no time may a new employer be assigned a rate lower than 1%. The computation of the average rate of contributions in a major industrial classification must exclude those employer accounts that are not eligible for the computation of an experience rating solely by reason of insufficient experience. The department shall develop the major industrial classifications for the state and shall annually determine the contribution rate for each classification.

History: En. Sec. 14, Ch. 685, L. 1979; amd. Sec. 5, Ch. 3, L. 1981; amd. Sec. 3, Ch. 50, L. 1989; amd. Sec. 25, Ch. 373, L. 1991.

39-51-1218. Rate schedules.

SCHEDULES OF CONTRIBUTION RATES - Part I

	Sched. I	Sched. II	Sched. III	Sched. IV
Minimum Ratio of Fund to Total Wages	(.0260)	(.0245)	(.0225)	(.0200)
Average Tax Rate	1.37	1.57	1.77	1.97
Rate Class	Contribution Rates for Eligible Employers			
1	0.00%	0.07%	0.27%	0.47%
2	0.07	0.27	0.47	0.67
3	0.27	0.47	0.67	0.87
4	0.47	0.67	0.87	1.07
5	0.67	0.87	1.07	1.27
6	0.87	1.07	1.27	1.47
7	1.07	1.27	1.47	1.67
8	1.27	1.47	1.67	1.87
9	1.47	1.67	1.87	2.07
10	1.67	1.87	2.07	2.27
Rate Class	Contribution Rates for Deficit Employers			
1	3.17%	3.37%	3.57%	3.77%
2	3.37	3.57	3.77	3.97
3	3.57	3.77	3.97	4.17
4	3.77	3.97	4.17	4.37
5	3.97	4.17	4.37	4.57
6	4.17	4.37	4.57	4.77
7	4.37	4.57	4.77	4.97
8	4.57	4.77	4.97	5.17
9	4.77	4.97	5.17	5.37
10	6.37	6.37	6.37	6.37

SCHEDULES OF CONTRIBUTION RATES - Part II

Sched. V	Sched. VI	Sched. VII	Sched. VIII	Sched. IX	Sched. X
(.0170)	(.0135)	(.0095)	(.0075)	(.0050)	(....)
2.17	2.37	2.57	2.77	2.97	3.17
Contribution Rates for Eligible Employers					
0.67%	0.87%	1.07%	1.27%	1.47%	1.67%
0.87	1.07	1.27	1.47	1.67	1.87
1.07	1.27	1.47	1.67	1.87	2.07
1.27	1.47	1.67	1.87	2.07	2.27
1.47	1.67	1.87	2.07	2.27	2.47
1.67	1.87	2.07	2.27	2.47	2.67
1.87	2.07	2.27	2.47	2.67	2.87
2.07	2.27	2.47	2.67	2.87	3.07
2.27	2.47	2.67	2.87	3.07	3.27
2.47	2.67	2.87	3.07	3.27	3.47
Contribution Rates for Deficit Employers					
3.97%	4.17%	4.37%	4.57%	4.77%	4.97%
4.17	4.37	4.57	4.77	4.97	5.17
4.37	4.57	4.77	4.97	5.17	5.37
4.57	4.77	4.97	5.17	5.37	5.57
4.77	4.97	5.17	5.37	5.57	5.77
4.97	5.17	5.37	5.57	5.77	5.97
5.17	5.37	5.57	5.77	5.97	6.17
5.37	5.57	5.77	5.97	6.17	6.37
5.57	5.77	5.97	6.17	6.37	6.37
6.37	6.37	6.37	6.37	6.37	6.37

History: En. Sec. 15, Ch. 685, L. 1979; amd. Sec. 5, Ch. 371, L. 1985; amd. Sec. 26, Ch. 373, L. 1991; amd. Sec. 4, Ch. 399, L. 1999.

Compiler's Comments

1999 Amendment: Chapter 399 substituted new schedules of contribution rates for former schedules of contribution rates (see 1999 Session Law for former text). Amendment effective October 1, 1999.

Applicability: Section 5, Ch. 399, L. 1999, provided: "[This act] applies to taxable wages paid on or after January 1, 2000."

39-51-1219. Procedures for the substitution, merger, or acquisition of an employer account by a successor employing unit. (1) Subject to the provisions of subsection (3), whenever any individual or organization (whether or not a covered employer) in any manner succeeds to or acquires all or substantially all of the business of an employer who at the time of acquisition was a covered employer and whenever in respect to whom the department finds that the business of the predecessor is continued solely by the successor:

(a) the separate account and the actual contribution, benefit, and taxable payroll experience of the predecessor must, upon the joint application of the predecessor and the successor within 90 days after the acquisition and approval by the department, be transferred to the successor employer for the purpose of determining the successor's liability and rate of contribution; and

(b) any successor who was not an employer on the date of acquisition becomes a covered employer as of that date.

(2) Whenever any individual or organization (whether or not a covered employer) in any manner succeeds to or acquires part of the business of an employer who at the time of acquisition was a covered employer and whenever that portion of the business is continued by the successor:

(a) so much of the separate account and the actual contribution, benefit, and taxable payroll experience of the predecessor as is attributable to the portion of the business transferred, as determined on a pro rata basis in the same ratio that the wages of covered employees properly allocable to the transferred portion of the business bear to the payroll of the predecessor in the last 4 completed calendar quarters immediately preceding the date of transfer, must, upon the joint application of the predecessor and the successor within 90 days after the acquisition and approval by the department, be transferred to the successor employer for the purpose of determining the successor's liability and rate of contribution; and

(b) any successor who was not an employer on the date of acquisition becomes a covered employer as of that date.

(3) (a) The 90-day period may be extended at the discretion of the department.

(b) Whenever a predecessor covered employer has a deficit experience rating account as of the last computation date, the transfer provided for in subsections (1) and (2) is mandatory except when it is shown by substantial evidence that the management, the ownership, or both the management and ownership are not substantially the same for the successor as for the predecessor, in which case the successor shall begin with the rate of a new employer. Whenever a mandatory transfer involves only a portion of the experience rating record and the predecessor or successor employers fail to supply the required payroll information within 10 days after notice, the transfer must be based on estimates of the applicable payrolls. The successor must be notified in writing of the mandatory transfer, and unless the mandatory transfer is appealed within 30 calendar days, the right to appeal is waived.

(c) Whenever a predecessor covered employer has an eligible experience rating account as of the last computation date and when it is shown by substantial evidence that the management, the ownership, or both the management and the ownership are substantially the same for the successor as for the predecessor, the transfer provided for in subsections (1) and (2) is automatic. Whenever an automatic transfer involves only a portion of the experience rating record and the predecessor or successor employers fail to supply the required payroll information within 10 days after notification, the transfer must be based on estimates of the applicable payrolls. The successor must be notified in writing of the automatic transfer and shall request within 30 days of notification that the experience rating account of the predecessor not be transferred.

(4) (a) If the successor was a covered employer prior to the date of the acquisition of all or a part of the predecessor's business, the successor's rate of contribution, effective the first day of the calendar year immediately following

the date of acquisition, is based on the combined experience of the predecessor and successor.

(b) If the successor was not a covered employer prior to the date of the acquisition of all or a part of the predecessor's business, the successor's rate is the rate applicable to the predecessor with respect to the period immediately preceding the date of acquisition, but if there was more than one predecessor, the successor's rate must be a newly computed rate based on the combined experience of the predecessors, becoming effective immediately after the date of acquisition and remaining in effect for the balance of the rate year.

History: En. Sec. 16, Ch. 685, L. 1979; amd. Sec. 1, Ch. 349, L. 1981; amd. Sec. 10, Ch. 234, L. 1987; amd. Sec. 55, Ch. 83, L. 1989; amd. Sec. 2, Ch. 171, L. 1993.

Part 13
Unpaid Contributions

Part Cross-References

General definitions, 39-51-201.

39-51-1301. Penalty and interest on past-due reports and taxes. (1) Failure to file reports and payments in a timely manner, as required under 39-51-603, 39-51-1103, and 39-51-1125, may subject an employer to penalty and interest, as provided by 15-1-216.

(2) There is an account in the federal special revenue fund. Penalties and interest collected for unemployment insurance obligations are distributed as provided in 15-30-250 and must be deposited in that account. Money deposited in that account and appropriated to the department or transferred by the department to its delegate, pursuant to 39-51-301(5), may only be used by the department or its delegate to administer this chapter, including the detection and collection of unpaid taxes and overpayments of benefits to the extent that federal grant revenue is less than amounts appropriated for this purpose. Money in the account not appropriated for these purposes must be transferred by the department to the unemployment insurance trust fund at the end of each fiscal year.

(3) All money accruing to the unemployment insurance trust fund from interest and penalties collected on past-due unemployment insurance taxes must be used solely for the payment of unemployment insurance benefits and may not be used for any other purpose.

History: En. Subd. (a), Sec. 14, Ch. 137, L. 1937; amd. Sec. 5, Ch. 137, L. 1939; amd. Sec. 8, Ch. 164, L. 1941; amd. Sec. 3, Ch. 233, L. 1943; amd. Sec. 5, Ch. 190, L. 1945; amd. Sec. 24, Ch. 368, L. 1975; amd. Sec. 1, Ch. 197, L. 1977; R.C.M. 1947, 87-135; amd. Sec. 1, Ch. 47, L. 1979; amd. Sec. 2, Ch. 57, L. 1979; amd. Sec. 19, Ch. 685, L. 1979; amd. Sec. 1, Ch. 2, L. 1981; amd. Sec. 1, Ch. 349, L. 1981; amd. Sec. 2, Ch. 369, L. 1983; amd. Sec. 1, Ch. 555, L. 1983; amd. Sec. 1, Ch. 13, Sp. L. June 1986; amd. Sec. 11, Ch. 234, L. 1987; amd. Sec. 12, Ch. 373, L. 1991; amd. Sec. 2, Ch. 639, L. 1991; amd. Sec. 8, Ch. 195, L. 1995; amd. Sec. 24, Ch. 491, L. 1997; amd. Sec. 52, Ch. 427, L. 1999.

Compiler's Comments

1999 Amendment: Chapter 427 in (1) at end substituted "15-1-216" for "15-30-209". Amendment effective January 1, 2000.

Applicability: Section 57, Ch. 427, L. 1999, provided that this section applies to all tax periods beginning after December 31, 1999.

39-51-1302. Summary or jeopardy assessment of unpaid taxes. (1) If any employer fails to file a report or return as required under this chapter or the regulations of the department adopted thereunder within the time specified or if the employer's records are inaccurate or are incomplete when an employer has already filed a quarterly wage report for the period in question, the department may make a summary or jeopardy assessment of the amount due by making up such report and determining the amount of taxes due and owing to the fund upon the basis of such information as the department may be able to obtain, and thereupon the same shall be collected the same as other reports and taxes due, with penalty and interest as provided in this chapter.

(2) Upon making such summary or jeopardy assessment, the department shall immediately notify the employer in writing by personal service or by certified mail in the usual course at the last known principal place of business operated by the employer. Such assessment shall be final unless the employer shall protest such assessment in writing within 15 days after service of the notice or, within the same period of time, the employer shall file a correct, signed, and sworn report and statement as provided by the chapter and the regulations of the department.

(3) Upon written protest being filed as above set forth, a day certain for the hearing thereof shall be fixed by the department and notice thereof mailed to the employer. At such hearing, the facts ascertained by the department shall be conclusive and the department may upon the basis of such facts ascertained assess the amount due, modify, set aside, or revise the prior assessment and require the employer to pay the amount due with penalty and interest as provided for in this chapter. A copy of the decision of the department and the assessment of the amount due shall be mailed to the employer at his last known principal place of business and thereupon become final.

History: En. as Subd. (f) of Sec. 14, Ch. 137, L. 1937 by Sec. 3, Ch. 233, L. 1943; amd. Sec. 28, Ch. 368, L. 1975; R.C.M. 1947, 87-140; amd. Sec. 1, Ch. 349, L. 1981; amd. Sec. 13, Ch. 373, L. 1991.

39-51-1303. Collection of unpaid taxes. (1) The department, or its delegate pursuant to 39-51-301(5), has authority to enter into payment agreements with an employer to resolve unpaid taxes, penalty, and interest. Penalty or interest, or both penalty and interest, may be abated if an acceptable payment agreement is entered into and adhered to. Failure to meet the terms of the payment agreement voids the penalty and interest abatement and penalty and interest must be recomputed from the due date of the unpaid tax.

(2) If, after due notice, any employer, liable corporate officer, liable member or manager of a limited liability company referred to in 39-51-1105, or partner in a limited liability partnership defaults in any payment of taxes, penalties, or interest on the taxes and penalties, the department, or its delegate pursuant to 39-51-301(5), may initiate a civil action in the name of the state to collect the amount due, and the employer, liable corporate officer, liable member or manager of a limited liability company referred to in 39-51-1105, or partner in a limited liability partnership adjudged in default shall pay the costs of the action.

(3) An action for the collection of taxes due must be brought within 5 years from the date the original or amended report was filed or assessment became due, whichever is later, or it is barred.

(4) The department, or its delegate pursuant to 39-51-301(5), may pursue its remedy under 39-51-1304, or this section, or both.

History: **En. Subd. (b), Sec. 14, Ch. 137, L. 1937; amd. Sec. 5, Ch. 137, L. 1939; amd. Sec. 8, Ch. 164, L. 1941; amd. Sec. 1, Ch. 36, L. 1969; amd. Sec. 1, Ch. 105, L. 1975; amd. Sec. 25, Ch. 368, L. 1975; amd. Sec. 1, Ch. 386, L. 1977; R.C.M. 1947, 87-136(1); amd. Sec. 46, Ch. 397, L. 1979; amd. Sec. 1, Ch. 349, L. 1981; amd. Sec. 1, Ch. 111, L. 1983; amd. Sec. 1, Ch. 514, L. 1985; amd. Sec. 12, Ch. 234, L. 1987; amd. Sec. 14, Ch. 373, L. 1991; amd. Sec. 9, Ch. 195, L. 1995; amd. Sec. 9, Ch. 529, L. 1995; amd. Sec. 7, Ch. 60, L. 1997; amd. Sec. 25, Ch. 491, L. 1997.**

39-51-1304. Lien for payment of unpaid taxes — levy and execution. (1) Unpaid taxes, including penalties and interest assessed on unpaid taxes, have the effect of a judgment against the employer or against the liable corporate officer or liable member or manager of a limited liability company referred to in 39-51-1105, or a partner in a limited liability partnership, arising at the time that the payments are due. The department may issue a certificate stating the amount of payments due and directing the clerk of the district court of any county of the state to enter the certificate as a judgment in the docket pursuant to 25-9-301. From the time that the judgment is docketed, it becomes a lien upon all real and personal property of the employer. After the due process requirements of 39-51-1109 and 39-51-2403 have been satisfied, the department may enforce the judgment through the sheriff or agent authorized to collect the tax in the same manner as prescribed for execution upon a judgment. A notice of levy may be made by means of a certified letter by an agent authorized to collect the tax. The department may enforce the judgment at any time within 10 years of the creation of the lien or the effective date of the lien, whichever is later.

(2) A judgment lien filed pursuant to this section may be renewed for another 10-year period pursuant to the methods provided in 25-13-102.

(3) The lien provided for in subsection (1) is not valid against any third party owning an interest in real or personal property against which the judgment is enforced if:

(a) the third party's interest is recorded prior to the entrance of the certificate as a judgment; and

(b) the third party receives from the most recent grantor of the interest a signed affidavit stating that all taxes, penalties, and interest due from the grantor have been paid.

(4) A grantor who signs and delivers an affidavit is subject to the penalties imposed by 39-51-3204 if any part of it is untrue. Notwithstanding the provisions of 39-51-3204, the department may proceed under 39-51-1303, this section, or both, to collect the delinquent taxes, penalties, and interest from the:

(a) employer;

(b) liable corporate officer;

(c) liable member or manager of a limited liability company referred to in 39-51-1105; or

(d) partner in a limited liability partnership.

(5) The lien provided for in subsection (1) must be released upon payment in full of the unpaid taxes, penalties, and accumulated interest. The department may release or may partially release the lien upon partial payment or whenever the department determines that the release or partial release of the lien will facilitate the collection of unpaid taxes, penalties, or interest. The department may release the lien if it determines that the lien is unenforceable.

History: **En. as Subd. (e) of Sec. 14, Ch. 137, L. 1937 by Sec. 8, Ch. 164, L. 1941; amd. Sec. 8, Ch. 156, L. 1961; amd. Sec. 27, Ch. 368, L. 1975; R.C.M. 1947, 87-139; amd. Sec. 1, Ch. 349, L. 1981; amd. Sec. 2, Ch. 514, L. 1985; amd. Sec. 13, Ch. 234, L. 1987; amd. Sec. 1, Ch. 487, L. 1987; amd. Sec. 15, Ch. 373, L. 1991; amd. Sec. 10, Ch. 195, L. 1995; amd. Sec. 10, Ch. 529, L. 1995; amd. Sec. 172, Ch. 42, L. 1997; amd. Sec. 8, Ch. 60, L. 1997; amd. Sec. 26, Ch. 491, L. 1997.**

Cross-References

Liens generally, Title 71, ch. 3, part 1.

39-51-1305. Priority of payment of taxes due under legal dissolutions or distributions. In the event of any distribution of an employer's assets pursuant to an order of any court under the laws of this state, including any receivership, assignment for benefit of creditors, adjudicated insolvency, composition, or similar proceeding, taxes then or thereafter due shall be paid in full prior to all other claims, except taxes and claims for wages of not more than $250 to each claimant earned within 6 months of the commencement of the proceeding.

History: **En. Subd. (c), Sec. 14, Ch. 137, L. 1937; amd. Sec. 5, Ch. 137, L. 1939; amd. Sec. 8, Ch. 164, L. 1941; R.C.M. 1947, 87-137; amd. Sec. 11, Ch. 125, L. 1985; amd. Sec. 16, Ch. 373, L. 1991.**

39-51-1306. Reciprocity with other states for collection of unpaid taxes. (1) The courts of this state shall recognize and enforce liabilities for unemployment taxes and any other special assessments imposed by other states which extend a like comity to this state.

(2) The department is hereby empowered to sue in the courts of any other jurisdiction which extends such comity to collect unemployment taxes, penalties, and interest due this state. The officials of other states which by statute or otherwise extend a like comity to this state may sue in the courts of this state to collect for such taxes and any other special assessments and interest and penalties, if any, due such state. In any such case the administrator may through his attorney or attorneys institute and conduct such suit for such other state.

(3) Venue of such proceedings shall be the same as for actions to collect delinquent taxes, penalties, and interest due under this chapter.

(4) A certificate by the secretary of any such state under the great seal of such state attesting the authority of such official or officials to collect unemployment insurance taxes and any other special assessments, penalties, and interest shall be conclusive evidence of such authority.

History: **En. Subd. (b), Sec. 14, Ch. 137, L. 1937; amd. Sec. 5, Ch. 137, L. 1939; amd. Sec. 8, Ch. 164, L. 1941; amd. Sec. 1, Ch. 36, L. 1969; amd. Sec. 1, Ch. 105, L. 1975; amd. Sec. 25, Ch. 368, L. 1975; amd. Sec. 1, Ch. 386, L. 1977; R.C.M. 1947, 87-136(2); amd. Sec. 2, Ch. 57, L. 1979; amd. Sec. 1, Ch. 349, L. 1981; amd. Sec. 17, Ch. 373, L. 1991.**

39-51-1307. Collection of unpaid taxes, penalties, and interest by offset. (1) To collect delinquent taxes, penalties, and interest, the department may direct the offset of any funds due the debtor from the state, except wages subject to the provisions of 25-13-614 and retirement benefits. The department, through the state auditor's office, shall provide the debtor with notice of the right to request a hearing on the offset action. A request for hearing must be made within 30 days of the date of the notice.

(2) Subject to approval by the department, reasonable fees or costs of collection incurred by the state auditor may be added to the amount of the debt,

including added fees or costs. The debtor is liable for repayment of the amount of the debt plus fees or costs added pursuant to this subsection. All money collected must be returned to the department to be applied to the debt, except that all fees or costs collected must be retained by the state auditor. If less than the full amount of the debt is collected, the state auditor shall retain only a proportionate share of the collection fees or costs.

(3) The department may file a claim for state funds on behalf of the employer if a claim is required before funds are available for offset.

(4) The debt need not be determined to be uncollectible as provided for in 39-51-3207 before being transferred for offset.

History: En. Sec. 13, Ch. 529, L. 1995.

Parts 14 through 20 reserved

Part 21
Benefit Eligibility

Part Cross-References

General definitions, 39-51-201.

39-51-2101. *(Temporary)* **Total unemployment — when.** An individual is considered to be totally unemployed in any week during which the individual:

(1) performed no work in employment and earned no wages for employment; or

(2) performed less than full-time work in employment with wages for employment of less than two times the individual's weekly benefit amount. *(Terminates July 1, 2001—sec. 4, Ch. 400, L. 1999.)*

39-51-2101. *(Effective July 1, 2001)* **Total unemployment — when.** An individual shall be deemed totally unemployed in any week during which the individual performed no work and earned no wages or a week of less than full-time work with wages of less than two times the individual's weekly benefit amount.

History: En. Subd. (n) to (r), Sec. 19, Ch. 137, L. 1937; amd. Sec. 6, Ch. 137, L. 1939; amd. Sec. 10, Ch. 164, L. 1941; amd. Sec. 5, Ch. 233, L. 1943; amd. Sec. 6, Ch. 190, L. 1945; amd. Sec. 3, Ch. 238, L. 1955; amd. Sec. 12, Ch. 171, L. 1957; amd. Sec. 11, Ch. 156, L. 1961; amd. Sec. 4, Ch. 269, L. 1963; amd. Sec. 1, Ch. 200, L. 1969; amd. Sec. 33, Ch. 368, L. 1975; amd. Sec. 1, Ch. 115, L. 1977; R.C.M. 1947, 87-149(a)(1); amd. Sec. 14, Ch. 234, L. 1987; amd. Sec. 1, Ch. 400, L. 1999.

Compiler's Comments

1999 Amendment: Chapter 400 in (1) inserted "in employment" and inserted "for employment"; in (2) at beginning substituted "performed" for "a week of" and inserted "in employment" and "for employment"; and made minor changes in style. Amendment effective July 1, 1999, and terminates July 1, 2001.

Effective Date — Applicability: Section 3, Ch. 400, L. 1999, provided: "[This act] is effective July 1, 1999, and applies to claims for benefits first filed on or after July 1, 1999."

39-51-2102. Week of unemployment — when deemed to commence. An individual's week of unemployment shall be deemed to commence only after his registration at an unemployment office, except as the department may by regulation otherwise prescribe.

History: En. Subd. (n) to (r), Sec. 19, Ch. 137, L. 1937; amd. Sec. 6, Ch. 137, L. 1939; amd. Sec. 10, Ch. 164, L. 1941; amd. Sec. 5, Ch. 233, L. 1943; amd. Sec. 6, Ch. 190, L. 1945;

amd. Sec. 3, Ch. 238, L. 1955; amd. Sec. 12, Ch. 171, L. 1957; amd. Sec. 11, Ch. 156, L. 1961; amd. Sec. 4, Ch. 269, L. 1963; amd. Sec. 1, Ch. 200, L. 1969; amd. Sec. 33, Ch. 368, L. 1975; amd. Sec. 1, Ch. 115, L. 1977; R.C.M. 1947, 87-149(a)(2); amd. Sec. 1, Ch. 349, L. 1981.

39-51-2103. Payment of benefits. (1) Benefits are payable from the fund to any individual who is or becomes unemployed and eligible for benefits as is herein prescribed.

(2) All benefits shall be paid through public employment offices in the state or other agencies designated by the department in accordance with such rules as the department may prescribe.

History: En. Sec. 3 (a), (b), (c), Ch. 137, L. 1937; amd. Sec. 1, Ch. 137, L. 1939; amd. Sec. 1, Ch. 164, L. 1941; amd. Sec. 1, Ch. 245, L. 1947; amd. Sec. 1, Ch. 178, L. 1949; amd. Sec. 1, Ch. 191, L. 1953; amd. Sec. 1, Ch. 238, L. 1955; amd. Sec. 1, Ch. 140, L. 1957; amd. Sec. 1, Ch. 156, L. 1961; amd. Sec. 1, Ch. 269, L. 1963; amd. Sec. 1, Ch. 4, Ex. L. 1969; amd. Sec. 1, Ch. 169, L. 1971; amd. Sec. 1, Ch. 394, L. 1973; amd. Sec. 1, Ch. 400, L. 1975; amd. Sec. 1, Ch. 528, L. 1977; R.C.M. 1947, 87-103(part); amd. Sec. 1, Ch. 349, L. 1981.

39-51-2104. General benefit eligibility conditions. (1) An unemployed individual is eligible to receive benefits for any week of total unemployment within the individual's benefit year only if the department finds that the individual:

(a) has filed a claim at and has continued to report at an employment office in accordance with rules that the department may prescribe, except that the department may by rule prescribe that in cases in which it finds the requirements oppressive or inconsistent with the purposes of this chapter, an unemployed individual may file a claim and report for work by mail or through other governmental agencies;

(b) is able to work, is available for work, and is seeking work. A claimant is not considered ineligible in any week of unemployment for failure to comply with the provisions of this subsection if the failure is because of:

(i) an illness or disability that occurs after the claimant has registered for work and suitable work has not been offered to the claimant after the beginning of the illness or disability; or

(ii) enrollment as a student as provided in 39-51-2307.

(c) prior to the first week for which the individual is paid benefits, has been totally unemployed for a waiting period of 1 week. A week is not counted as a week of total unemployment for the purposes of this subsection:

(i) if benefits have been paid for that week;

(ii) unless the individual was eligible for benefits during the week;

(iii) unless it occurs within the benefit year of the claimant;

(iv) unless it occurs after benefits first could become payable to any individual under this chapter.

(2) (a) The department shall establish a profiling system to identify individuals who are likely to exhaust their regular benefits and who are in need of reemployment services.

(b) In addition to the requirements listed in subsection (1), an individual identified pursuant to subsection (2)(a) may be required to participate in reemployment services in order to be eligible for unemployment benefits.

(c) The requirement for participation in reemployment services may be waived if the department determines that:

(i) the individual has completed reemployment services; or

(ii) the individual's failure to participate in reemployment services is justifiable.

History: En. Sec. 4, Ch. 137, L. 1937; amd. Sec. 2, Ch. 137, L. 1939; amd. Sec. 2, Ch. 164, L. 1941; amd. Sec. 1, Ch. 233, L. 1943; amd. Sec. 1, Ch. 190, L. 1945; amd. Sec. 3, Ch. 191, L. 1953; amd. Sec. 2, Ch. 238, L. 1955; amd. Sec. 2, Ch. 140, L. 1957; amd. Sec. 3, Ch. 156, L. 1961; amd. Sec. 1, Ch. 390, L. 1971; amd. Sec. 1, Ch. 323, L. 1975; amd. Sec. 2, Ch. 368, L. 1975; amd. Sec. 1, Ch. 428, L. 1977; R.C.M. 1947, 87-105(a) thru (d); amd. Sec. 47, Ch. 397, L. 1979; amd. Sec. 1, Ch. 349, L. 1981; amd. Sec. 12, Ch. 125, L. 1985; amd. Sec. 6, Ch. 371, L. 1985; amd. Sec. 1, Ch. 404, L. 1993; amd. Sec. 11, Ch. 195, L. 1995.

39-51-2105. Qualifying wages. To qualify for benefits, an individual must have been paid total wages for employment in the base period in an amount:

(1) not less than 1 ½ times the wages earned in the calendar quarter in which wages were the highest during the base period; however, the total wages in the base period must be equal to or greater than 7% of the average annual wage described in 39-51-2201; or

(2) equal to or greater than 50% of the average annual wage described in 39-51-2201.

History: En. Sec. 3 (a), (b), (c), Ch. 137, L. 1937; amd. Sec. 1, Ch. 137, L. 1939; amd. Sec. 1, Ch. 164, L. 1941; amd. Sec. 1, Ch. 245, L. 1947; amd. Sec. 1, Ch. 178, L. 1949; amd. Sec. 1, Ch. 191, L. 1953; amd. Sec. 1, Ch. 238, L. 1955; amd. Sec. 1, Ch. 140, L. 1957; amd. Sec. 1, Ch. 156, L. 1961; amd. Sec. 1, Ch. 269, L. 1963; amd. Sec. 1, Ch. 4, Ex. L. 1969; amd. Sec. 1, Ch. 169, L. 1971; amd. Sec. 1, Ch. 394, L. 1973; amd. Sec. 1, Ch. 400, L. 1975; amd. Sec. 1, Ch. 528, L. 1977; R.C.M. 1947, 87-103(part); amd. Sec. 1, Ch. 688, L. 1979; amd. Sec. 1, Ch. 153, L. 1987; amd. Sec. 15, Ch. 234, L. 1987; amd. Sec. 1, Ch. 485, L. 1991.

39-51-2106. Certain wages not to be used in determining benefit eligibility or amount. Wages earned for services performed as an employee representative as defined in the Railroad Unemployment Insurance Act (45 U.S.C. 351, et seq.) or for services performed for an employer as defined in that act are not included for the purposes of determining eligibility or weekly benefit amount under this chapter.

History: En. Sec. 3 (a), (b), (c), Ch. 137, L. 1937; amd. Sec. 1, Ch. 137, L. 1939; amd. Sec. 1, Ch. 164, L. 1941; amd. Sec. 1, Ch. 245, L. 1947; amd. Sec. 1, Ch. 178, L. 1949; amd. Sec. 1, Ch. 191, L. 1953; amd. Sec. 1, Ch. 238, L. 1955; amd. Sec. 1, Ch. 140, L. 1957; amd. Sec. 1, Ch. 156, L. 1961; amd. Sec. 1, Ch. 269, L. 1963; amd. Sec. 1, Ch. 4, Ex. L. 1969; amd. Sec. 1, Ch. 169, L. 1971; amd. Sec. 1, Ch. 394, L. 1973; amd. Sec. 1, Ch. 400, L. 1975; amd. Sec. 1, Ch. 528, L. 1977; R.C.M. 1947, 87-103(part); amd. Sec. 173, Ch. 42, L. 1997.

39-51-2107. Services for remuneration to be performed during benefit year as condition for receiving benefits in second benefit year — amount required. An individual who received benefits during a benefit year must perform services for remuneration following the initial separation from employment in the previous benefit year as a condition for receiving benefits in a second benefit year. The service must constitute employment as defined in 39-51-203 and 39-51-204. However, the individual must have earned the lesser of three-thirteenths of his high quarter of his second benefit year or 6 times his weekly benefit amount of that same year.

History: En. Sec. 4, Ch. 137, L. 1937; amd. Sec. 2, Ch. 137, L. 1939; amd. Sec. 2, Ch. 164, L. 1941; amd. Sec. 1, Ch. 233, L. 1943; amd. Sec. 1, Ch. 190, L. 1945; amd. Sec. 3, Ch. 191, L. 1953; amd. Sec. 2, Ch. 238, L. 1955; amd. Sec. 2, Ch. 140, L. 1957; amd. Sec. 3, Ch. 156, L. 1961; amd. Sec. 1, Ch. 390, L. 1971; amd. Sec. 1, Ch. 323, L. 1975; amd. Sec. 2, Ch. 368, L. 1975; amd. Sec. 1, Ch. 428, L. 1977; R.C.M. 1947, 87-105(e); amd. Sec. 29, Ch. 373, L. 1991.

39-51-2108. Payment of benefits based on services in public, charitable, or educational organizations. (1) Benefits based on services in employment defined in 39-51-203(5) and (6) are payable in the same amount, on the same terms, and subject to the same conditions as benefits payable on the basis of other services subject to this chapter, except that benefits based on services in an instructional, research, or principal administrative capacity for an educational institution may not be paid to an individual for any week of unemployment which begins during the period between two successive academic years or during a similar period between two regular terms, whether or not successive, or during a period of paid sabbatical leave provided for in the individual's contract if the individual performs the services in the first of the academic years or terms and if the individual has a contract to perform services or a reasonable assurance of performing services in any instructional, research, or principal administrative capacity for any educational institution in the second of the academic years or terms.

(2) Benefits based on services in any other capacity for an educational institution must be denied to any individual for any week which commences during a period between 2 successive academic years or terms if the individual performs the services in the first of the academic years or terms and there is a reasonable assurance that the individual will perform the services in the second of the academic years or terms. If any individual is denied benefits and was not offered an opportunity to perform the services for the educational institution for the second of the academic years or terms, the individual is entitled to a retroactive payment of the benefits for each week for which the individual filed a timely claim for benefits and for which benefits were denied solely by reason of the denial provided for in this section.

(3) Benefits based on services described in subsections (1) and (2) of this section must be denied to any individual for any week that commences during an established and customary vacation period or holiday recess if the individual performs the services in the period immediately before the vacation period or holiday recess and there is reasonable assurance that the individual will perform the service in the period immediately following the vacation period or holiday recess.

(4) Benefits based on services described in subsections (1) and (2) to an individual who performed the services for an educational institution while in the employ of an educational service agency must be denied as specified in subsections (1) through (3). The term "educational service agency" means a governmental agency or governmental entity which is established and operated exclusively for the purpose of providing the service to one or more educational institutions.

History: En. Sec. 4, Ch. 137, L. 1937; amd. Sec. 2, Ch. 137, L. 1939; amd. Sec. 2, Ch. 164, L. 1941; amd. Sec. 1, Ch. 233, L. 1943; amd. Sec. 1, Ch. 190, L. 1945; amd. Sec. 3, Ch. 191, L. 1953; amd. Sec. 2, Ch. 238, L. 1955; amd. Sec. 2, Ch. 140, L. 1957; amd. Sec. 3, Ch. 156, L. 1961; amd. Sec. 1, Ch. 390, L. 1971; amd. Sec. 1, Ch. 323, L. 1975; amd. Sec. 2, Ch. 368, L. 1975; amd. Sec. 1, Ch. 428, L. 1977; R.C.M. 1947, 87-105(f); amd. Sec. 48, Ch. 397, L. 1979; amd. Sec. 1, Ch. 1, L. 1985; amd. Sec. 27, Ch. 491, L. 1997; amd. Sec. 5, Ch. 61, L. 1999.

Compiler's Comments

1999 Amendment: Chapter 61 near beginning of (1) after "conditions" substituted "as benefits payable" for "as compensation payable", near end after "individual's contract" inserted "if the individual performs the services in the first of the academic years or terms and", and at end after "institution" substituted "in the second of the academic years or terms" for "for both academic years or both terms"; and made minor changes in style. Amendment effective July 1, 1999.

39-51-2109. Payment of benefits to athletes. Effective January 1, 1978, benefits shall not be paid to any individual on the basis of any services, substantially all of which consist of participating in sports or athletic events or training or preparing to so participate, for any week which commences during the period between 2 successive sport seasons or similar periods if such individual performed such services in the first of such seasons or similar periods and there is a reasonable assurance that such individual will perform such services in the later of such seasons or similar periods.

History: En. Sec. 4, Ch. 137, L. 1937; amd. Sec. 2, Ch. 137, L. 1939; amd. Sec. 2, Ch. 164, L. 1941; amd. Sec. 1, Ch. 233, L. 1943; amd. Sec. 1, Ch. 190, L. 1945; amd. Sec. 3, Ch. 191, L. 1953; amd. Sec. 2, Ch. 238, L. 1955; amd. Sec. 2, Ch. 140, L. 1957; amd. Sec. 3, Ch. 156, L. 1961; amd. Sec. 1, Ch. 390, L. 1971; amd. Sec. 1, Ch. 323, L. 1975; amd. Sec. 2, Ch. 368, L. 1975; amd. Sec. 1, Ch. 428, L. 1977; R.C.M. 1947, 87-105(g).

39-51-2110. Payment of benefits to aliens. (1) Benefits may not be paid on the basis of services performed by an alien unless the alien is an individual who was lawfully admitted for permanent residence at the time the services were performed, was lawfully present for the purposes of performing the services, or was permanently residing in the United States under color of law at the time the services were performed, including an alien who was lawfully present in the United States as a result of the application of the provisions of the Immigration and Nationality Act, 8 U.S.C. 1152.

(2) Any data or information required of individuals applying for benefits to determine whether benefits are not payable to the individuals because of the individuals' alien status must be uniformly required from all applicants for benefits.

(3) In the case of an individual whose application for benefits would otherwise be approved, a determination that benefits to the individual are not payable because of the individual's alien status may not be made except upon a preponderance of the evidence.

History: En. Sec. 4, Ch. 137, L. 1937; amd. Sec. 2, Ch. 137, L. 1939; amd. Sec. 2, Ch. 164, L. 1941; amd. Sec. 1, Ch. 233, L. 1943; amd. Sec. 1, Ch. 190, L. 1945; amd. Sec. 3, Ch. 191, L. 1953; amd. Sec. 2, Ch. 238, L. 1955; amd. Sec. 2, Ch. 140, L. 1957; amd. Sec. 3, Ch. 156, L. 1961; amd. Sec. 1, Ch. 390, L. 1971; amd. Sec. 1, Ch. 323, L. 1975; amd. Sec. 2, Ch. 368, L. 1975; amd. Sec. 1, Ch. 428, L. 1977; R.C.M. 1947, 87-105(h); amd. Sec. 18, Ch. 373, L. 1991; amd. Sec. 3, Ch. 171, L. 1993; amd. Sec. 174, Ch. 42, L. 1997.

Part 22
Amount and Duration of Benefits

Part Cross-References

General definitions, 39-51-201.

39-51-2201. Weekly benefit amount — determination of average weekly wage. (1) For claims filed before July 7, 1985, an eligible individual's weekly benefit amount shall be the total base period wages divided by the number of weeks of covered employment times 50%. The weekly benefit amount, if not a multiple of $1, must be rounded to the nearest lower full dollar amount. However, such amount shall not be less than the minimum or more than the maximum weekly benefit amount. For claims effective July 7, 1985, and filed before July 7, 1991, an individual's weekly benefit amount shall be the total base period wages divided by the number of weeks of covered employment times 49%. The weekly benefit amount, if not a multiple of $1, must be rounded to the nearest lower full dollar amount. However, such amount shall not be less than the minimum or more than the maximum weekly benefit amount.

(2) For claims filed on or after July 7, 1991, an individual's weekly benefit amount must be an amount equal to 1% of the total base period wages or equal to 1.9% of the total wages paid in the 2 calendar quarters in which wages were the highest during the base period. The weekly benefit amount, if not a multiple of $1, must be rounded to the nearest lower full dollar amount. However, the amount may not be less than the minimum or more than the maximum weekly benefit amount.

(3) On or before May 31 of each year, the total wages paid by all employers as reported on contribution reports submitted on or before such date for the preceding calendar year shall be divided by the average monthly number of individuals employed during the same preceding calendar year as reported on such contribution reports. The amount thus obtained is the average annual wage. The average annual wage divided by 52, rounded to the nearest cent, is the average weekly wage. Sixty percent of the average weekly wage shall constitute the maximum weekly benefit amount and shall apply to all maximum weekly benefit amount claims for benefits filed to establish a benefit year commencing on or after July 1 of the same year, except that the maximum weekly benefit amount for benefit years commencing on or after July 1, 1984, through January 3, 1987, is the amount calculated under this subsection after January 1, 1984, and on or before May 31, 1984. Such maximum weekly benefit amount, if not a multiple of $1, shall be computed to the nearest lower full dollar amount.

(4) The minimum weekly benefit amount shall be 15% of the average weekly wage. The minimum weekly benefit amount, if not a multiple of $1, shall be computed to the nearest lower full dollar amount.

History: En. Sec. 3 (a), (b), (c), Ch. 137, L. 1937; amd. Sec. 1, Ch. 137, L. 1939; amd. Sec. 1, Ch. 164, L. 1941; amd. Sec. 1, Ch. 245, L. 1947; amd. Sec. 1, Ch. 178, L. 1949; amd. Sec. 1, Ch. 191, L. 1953; amd. Sec. 1, Ch. 238, L. 1955; amd. Sec. 1, Ch. 140, L. 1957; amd. Sec. 1, Ch. 156, L. 1961; amd. Sec. 1, Ch. 269, L. 1963; amd. Sec. 1, Ch. 4, Ex. L. 1969; amd. Sec. 1, Ch. 169, L. 1971; amd. Sec. 1, Ch. 394, L. 1973; amd. Sec. 1, Ch. 400, L. 1975; amd. Sec. 1, Ch. 528, L. 1977; R.C.M. 1947, 87-103(b); amd. Sec. 2, Ch. 688, L. 1979; amd. Sec. 1, Ch. 349, L. 1981; amd. Sec. 1, Ch. 193, L. 1983; amd. Sec. 7, Ch. 371, L. 1985; amd. Sec. 2, Ch. 485, L. 1991.

39-51-2202. *(Temporary)* **Partial payment of benefits.** Partial payment for a week of unemployment, as used in this section, is the claimant's weekly benefit amount less 50% of wages for employment earned in excess of one-fourth of the claimant's weekly benefit amount. The wages for employment and the one-fourth weekly benefit amount, if not a multiple of $1, must be rounded to the nearest lower full dollar amount. *(Terminates July 1, 2001—sec. 4, Ch. 400, L. 1999.)*

39-51-2202. *(Effective July 1, 2001)* **Partial payment of benefits.** Partial payment for a week of unemployment as used in this section shall be the claimant's weekly benefit amount less 50% of wages earned in excess of one-fourth of his weekly benefit amount. Such wages and the one-fourth weekly benefit amount, if not a multiple of $1, shall be rounded to the nearest lower full dollar amount.

History: En. Subd. (n) to (r), Sec. 19, Ch. 137, L. 1937; amd. Sec. 6, Ch. 137, L. 1939; amd. Sec. 10, Ch. 164, L. 1941; amd. Sec. 5, Ch. 233, L. 1943; amd. Sec. 6, Ch. 190, L. 1945; amd. Sec. 3, Ch. 238, L. 1955; amd. Sec. 12, Ch. 171, L. 1957; amd. Sec. 11, Ch. 156, L. 1961; amd. Sec. 4, Ch. 269, L. 1963; amd. Sec. 1, Ch. 200, L. 1969; amd. Sec. 33, Ch. 368, L. 1975; amd. Sec. 1, Ch. 115, L. 1977; R.C.M. 1947, 87-149(a)(3)(A); amd. Sec. 2, Ch. 193, L. 1983; amd. Sec. 2, Ch. 400, L. 1999.

Compiler's Comments

1999 Amendment: Chapter 400 in first and second sentences inserted "for employment"; and made minor changes in style. Amendment effective July 1, 1999, and terminates July 1, 2001.

Effective Date — Applicability: Section 3, Ch. 400, L. 1999, provided: "[This act] is effective July 1, 1999, and applies to claims for benefits first filed on or after July 1, 1999."

39-51-2203. Reduction of benefits because of amounts received from certain other sources. (1) An individual's weekly benefit amount must be reduced (but not below zero) by the amount that the individual is receiving in the form of a governmental or other pension, retirement pay, annuity, or other similar periodic payment that is based on the previous work of the individual and that is reasonably attributable to the week if:

(a) the payment is made under a plan maintained or contributed to by a base-period or chargeable employer; and

(b) except in the case of payments made under the Social Security Act or the Railroad Retirement Act, the services performed for the employer by the individual after the beginning of the base period or the remuneration for services affect eligibility for or the amount of the pension, retirement pay, annuity, or other similar payment.

(2) The reduction required by subsection (1) does not apply in those instances in which the governmental or other pension, retirement pay, annuity, or other similar periodic payment is made from a fund to which the individual was required to make a direct contribution.

History: En. Subd. (n) to (r), Sec. 19, Ch. 137, L. 1937; amd. Sec. 6, Ch. 137, L. 1939; amd. Sec. 10, Ch. 164, L. 1941; amd. Sec. 5, Ch. 233, L. 1943; amd. Sec. 6, Ch. 190, L. 1945; amd. Sec. 3, Ch. 238, L. 1955; amd. Sec. 12, Ch. 171, L. 1957; amd. Sec. 11, Ch. 156, L. 1961; amd. Sec. 4, Ch. 269, L. 1963; amd. Sec. 1, Ch. 200, L. 1969; amd. Sec. 33, Ch. 368, L. 1975; amd. Sec. 1, Ch. 115, L. 1977; R.C.M. 1947, 87-149(a)(3)(B); amd. Sec. 1, Ch. 41, L. 1981; amd. Sec. 1, Ch. 349, L. 1981; amd. Sec. 1, Ch. 145, L. 1983; amd. Sec. 8, Ch. 618, L. 1989; amd. Sec. 4, Ch. 171, L. 1993; amd. Sec. 12, Ch. 195, L. 1995.

39-51-2204. Maximum benefit amount. Any otherwise eligible individual is entitled during the individual's benefit year to a total amount of benefits equal to the individual's weekly benefit amount, as calculated according to 39-51-2201, times the number of full weeks of benefit entitlement appearing in the following table in the line which includes the individual's ratio of total base period earnings to the highest quarter of earnings in the base period:

Ratio of Total Base Period Earnings to High Quarter At Least	But Less Than	Full Weeks of Benefits
1.00	1.25	8
1.25	1.50	10
1.50	1.75	12
1.75	2.00	14
2.00	2.25	16
2.25	2.50	18
2.50	2.75	20
2.75	3.00	22
3.00	3.25	24
3.25	—	26

History: En. Sec. 3 (a), (b), (c), Ch. 137, L. 1937; amd. Sec. 1, Ch. 137, L. 1939; amd. Sec. 1, Ch. 164, L. 1941; amd. Sec. 1, Ch. 245, L. 1947; amd. Sec. 1, Ch. 178, L. 1949; amd. Sec. 1, Ch. 191, L. 1953; amd. Sec. 1, Ch. 238, L. 1955; amd. Sec. 1, Ch. 140, L. 1957; amd. Sec. 1, Ch. 156, L. 1961; amd. Sec. 1, Ch. 269, L. 1963; amd. Sec. 1, Ch. 4, Ex. L. 1969; amd. Sec. 1, Ch. 169, L. 1971; amd. Sec. 1, Ch. 394, L. 1973; amd. Sec. 1, Ch. 400, L. 1975; amd. Sec. 1, Ch. 528, L. 1977; R.C.M. 1947, 87-103(d); amd. Sec. 3, Ch. 688, L. 1979; amd. Sec. 2, Ch. 153, L. 1987; amd. Sec. 3, Ch. 485, L. 1991.

39-51-2205. Continuation of benefits at death of claimant. All accrued benefits due and payable at the time of death to any deceased claimant shall be paid to the surviving spouse or, if there be no surviving spouse, then to the surviving children or, if there be no surviving children, then to the next of kin without the necessity of any recipient obtaining letters testamentary or of administration.

History: En. Sec. 3 (a), (b), (c), Ch. 137, L. 1937; amd. Sec. 1, Ch. 137, L. 1939; amd. Sec. 1, Ch. 164, L. 1941; amd. Sec. 1, Ch. 245, L. 1947; amd. Sec. 1, Ch. 178, L. 1949; amd. Sec. 1, Ch. 191, L. 1953; amd. Sec. 1, Ch. 238, L. 1955; amd. Sec. 1, Ch. 140, L. 1957; amd. Sec. 1, Ch. 156, L. 1961; amd. Sec. 1, Ch. 269, L. 1963; amd. Sec. 1, Ch. 4, Ex. L. 1969; amd. Sec. 1, Ch. 169, L. 1971; amd. Sec. 1, Ch. 394, L. 1973; amd. Sec. 1, Ch. 400, L. 1975; amd. Sec. 1, Ch. 528, L. 1977; R.C.M. 1947, 87-103(g).

39-51-2206. Repealed. Sec. 28, Ch. 234, L. 1987.

History: En. Sec. 15, Ch. 125, L. 1985.

39-51-2207. Voluntary and other withholding of taxes from benefits — procedures. (1) The department shall advise an individual at the time the individual files a new claim for unemployment compensation that:

(a) unemployment compensation is subject to federal income tax;

(b) requirements exist pertaining to estimated tax payments;

(c) the individual may elect to have federal income tax deducted and withheld from the individual's unemployment compensation at the rate or amount specified in the Internal Revenue Code; and

(d) the individual may change a previously elected withholding status in a manner and at a frequency prescribed by the department.

(2) Funds deducted and withheld from unemployment compensation must remain in the unemployment insurance fund provided for in 39-51-401 until the funds are transferred as income tax payments to the internal revenue service.

(3) The department shall:

(a) follow all procedures specified by the United States department of labor and the internal revenue service pertaining to the voluntary deduction and withholding of income tax from unemployment compensation; and

(b) deduct and withhold from unemployment compensation amounts of federal income tax other than those specified in subsection (1)(c) in accordance with the priorities established by the department by rule.

History: **En. Sec. 1, Ch. 60, L. 1997.**

39-51-2208. Deduction and withholding of unemployment benefits to repay overissuance of food stamps — definitions. (1) For the purposes of this section, the following definitions apply:

(a) "State food stamp agency" means any agency of a state or a political subdivision of a state that is responsible for enforcing the repayment of an obligation for overissuance of food stamp coupons.

(b) "Unemployment benefits" means benefits payable under the Montana unemployment insurance law, including amounts payable by the department pursuant to an agreement under any federal law that provides for benefits, assistance, or allowances with respect to unemployment.

(2) An individual filing a new claim for unemployment benefits shall disclose at the time of filing the claim whether or not the individual owes for an uncollected overissuance of food stamp coupons as defined in section 13(c)(1) of the Food Stamp Act of 1977 (7 U.S.C. 2022(c)(1)). If an individual discloses that the individual has an uncollected obligation for overissuance of food stamp coupons and if the department finds that the individual is eligible for unemployment benefits, the department shall notify the state food stamp agency that the individual is eligible for unemployment benefits.

(3) The department shall deduct and withhold from any unemployment benefits payable to an individual who has an obligation for an uncollected overissuance of food stamp coupons:

(a) the amount specified by the individual to the department to be deducted and withheld, in which case subsections (3)(b) and (3)(c) are not applicable;

(b) the amount, if any, determined by a state food stamp agency for enforcing obligations for overissuance of food stamp coupons, pursuant to an agreement submitted to the department under section 13(c)(3)(A) of the Food Stamp Act of 1977 (7 U.S.C. 2022(c)(3)(A)), unless subsection (3)(c) is applicable; or

(c) any amount otherwise required to be deducted and withheld from unemployment benefits pursuant to section 13(c)(3)(B) of the Food Stamp Act of 1977 (7 U.S.C. 2022 (c)(3)(B)).

(4) The department shall pay any amount deducted and withheld under subsection (3) to the appropriate state food stamp agency responsible for enforcing an obligation for overissuance of food stamp coupons.

(5) Deductions may be made pursuant to this section only if appropriate arrangements have been made for reimbursement by the state food stamp agency for the administrative costs incurred by the department under this section.

(6) Any amount deducted and withheld under subsection (3) must be treated as if it were paid to the individual as unemployment benefits and then

paid by the individual to the state food stamp agency in satisfaction of the individual's uncollected overissuance of food stamp coupons.

History: En. Sec. 2, Ch. 60, L. 1997.

Part 23

Benefit Disqualification

Part Cross-References

General definitions, 39-51-201.

39-51-2301. Disqualification not to be confined to a single benefit year. A disqualification pursuant to the provisions of this part may not be confined to a single benefit year.

History: En. Sec. 5, Ch. 137, L. 1937; amd. Sec. 3, Ch. 164, L. 1941; amd. Sec. 4, Ch. 191, L. 1953; amd. Sec. 1, Ch. 164, L. 1955; amd. Sec. 1, Ch. 171, L. 1957; amd. Sec. 4, Ch. 156, L. 1961; amd. Sec. 2, Ch. 269, L. 1963; amd. Sec. 1, Ch. 84, L. 1965; amd. Sec. 1, Ch. 188, L. 1967; amd. Sec. 3, Ch. 4, Ex. L. 1969; amd. Sec. 1, Ch. 38, L. 1971; amd. Sec. 1, Ch. 415, L. 1971; amd. Sec. 1, Ch. 369, L. 1973; amd. Sec. 1, Ch. 498, L. 1973; amd. Sec. 1, Ch. 170, L. 1975; amd. Sec. 1, Ch. 133, L. 1977; R.C.M. 1947, 87-106(h).

39-51-2302. Disqualification for leaving work without good cause. (1) An individual must be disqualified for benefits if the individual has left work without good cause attributable to the individual's employment.

(2) The individual may not be disqualified if the individual leaves:

(a) employment because of personal illness or injury not associated with misconduct upon the advice of a licensed and practicing physician and, after recovering from the illness or injury when recovery is certified by a licensed and practicing physician, the individual returned to and offered service to the individual's employer and the individual's regular or comparable suitable work was not available, as determined by the department, provided the individual is otherwise eligible; or

(b) temporary work accepted during a period of unemployment caused by a lack of work with the individual's regular employer if upon leaving the temporary work the individual returned immediately to work for the individual's regular employer, provided that the individual is unemployed for nondisqualifying reasons.

(3) To requalify for benefits, an individual shall perform services for which remuneration is received equal to or in excess of six times the individual's weekly benefit amount subsequent to the week in which the act causing the disqualification occurred unless the individual has been in regular attendance at an educational institution accredited by the state of Montana for at least 3 consecutive months from the date of the individual's enrollment. The services must constitute employment as defined in 39-51-203 and 39-51-204.

History: En. Sec. 5, Ch. 137, L. 1937; amd. Sec. 3, Ch. 164, L. 1941; amd. Sec. 4, Ch. 191, L. 1953; amd. Sec. 1, Ch. 164, L. 1955; amd. Sec. 1, Ch. 171, L. 1957; amd. Sec. 4, Ch. 156, L. 1961; amd. Sec. 2, Ch. 269, L. 1963; amd. Sec. 1, Ch. 84, L. 1965; amd. Sec. 1, Ch. 188, L. 1967; amd. Sec. 3, Ch. 4, Ex. L. 1969; amd. Sec. 1, Ch. 38, L. 1971; amd. Sec. 1, Ch. 415, L. 1971; amd. Sec. 1, Ch. 369, L. 1973; amd. Sec. 1, Ch. 498, L. 1973; amd. Sec. 1, Ch. 170, L. 1975; amd. Sec. 1, Ch. 133, L. 1977; R.C.M. 1947, 87-106(intro), (a); amd. Sec. 4, Ch. 688, L. 1979; amd. Sec. 1, Ch. 349, L. 1981; amd. Sec. 8, Ch. 371, L. 1985; amd. Sec. 30, Ch. 373, L. 1991; amd. Sec. 9, Ch. 60, L. 1997; amd. Sec. 6, Ch. 61, L. 1999.

Compiler's Comments

1999 Amendment: Chapter 61 near beginning of (3) after "services" deleted "other than self-employment" and inserted second sentence requiring that services meet definition of employment as provided in 39-51-203 and 39-51-204. Amendment effective July 1, 1999.

39-51-2303. Disqualification for discharge due to misconduct. An individual must be disqualified for benefits after being discharged:

(1) for misconduct connected with the individual's work or affecting the individual's employment until the individual has performed services:

(a) for which remuneration is received equal to or in excess of eight times the individual's weekly benefit amount subsequent to the week in which the act causing the disqualification occurred; and

(b) that constitute employment as defined in 39-51-203 and 39-51-204; or

(2) for gross misconduct connected with the individual's work or committed on the employer's premises, as determined by the department, for a period of 52 weeks.

History: En. Sec. 5, Ch. 137, L. 1937; amd. Sec. 3, Ch. 164, L. 1941; amd. Sec. 4, Ch. 191, L. 1953; amd. Sec. 1, Ch. 164, L. 1955; amd. Sec. 1, Ch. 171, L. 1957; amd. Sec. 4, Ch. 156, L. 1961; amd. Sec. 2, Ch. 269, L. 1963; amd. Sec. 1, Ch. 84, L. 1965; amd. Sec. 1, Ch. 188, L. 1967; amd. Sec. 3, Ch. 4, Ex. L. 1969; amd. Sec. 1, Ch. 38, L. 1971; amd. Sec. 1, Ch. 415, L. 1971; amd. Sec. 1, Ch. 369, L. 1973; amd. Sec. 1, Ch. 498, L. 1973; amd. Sec. 1, Ch. 170, L. 1975; amd. Sec. 1, Ch. 133, L. 1977; R.C.M. 1947, 87-106(intro), (b); amd. Sec. 5, Ch. 688, L. 1979; amd. Sec. 1, Ch. 349, L. 1981; amd. Sec. 16, Ch. 234, L. 1987; amd. Sec. 7, Ch. 61, L. 1999.

Compiler's Comments

1999 Amendment: Chapter 61 at end of (1) after "services" deleted "other than self-employment"; inserted (1)(b) requiring disqualification for misconduct until individual has performed services that constitute employment defined in 39-51-203 and 39-51-204; and made minor changes in style. Amendment effective July 1, 1999.

39-51-2304. Disqualification for failure to apply for or to accept suitable work. (1) An individual is disqualified for benefits if the individual fails without good cause either to apply for available and suitable work when directed to do so by the employment office or the department or to accept an offer of suitable work which the individual is physically able and mentally qualified to perform or to return to customary self-employment, if any, when directed to do so by the department. The disqualification continues for the week in which the failure occurs and until the individual has performed services for which remuneration is received equal to or in excess of six times that individual's weekly benefit amount subsequent to the week the act causing the disqualification occurred, with a reduction in the individual's maximum benefit amount equal to six times the weekly benefit amount, as determined by the department, provided the individual has not left this work under disqualifying circumstances. The services must constitute employment as defined in 39-51-203 and 39-51-204.

(2) In determining whether or not any work is suitable for an individual, the department shall consider:

(a) the degree of risk involved to the individual's health, safety, and morals;

(b) the individual's physical fitness and prior training;

(c) the individual's experience and previous earnings;

(d) the individual's length of unemployment and prospects for securing local work in the customary occupation; and

(e) the distance of the available work from the individual's residence.

(3) Notwithstanding any other provisions of this chapter, including subsection (4), no work may be considered suitable and benefits may not be denied under this chapter to any otherwise eligible individual for refusing to accept new work under any of the following conditions:

(a) if the position offered is vacant due directly to a strike, lockout, or other labor dispute;

(b) if the wages, hours, or other conditions of the work offered are substantially less favorable to the individual than those prevailing for similar work in the locality;

(c) if, as a condition of being employed, the individual would be required to join a company union or to resign from or refrain from joining any bona fide labor organization.

(4) Subject to subsection (3), after 13 weeks of unemployment, suitable work is work that meets the criteria in this section and that offers 75% of the individual's earnings in previous insured work in the individual's customary occupation. No individual, however, is required to accept a job paying less than the federal minimum wage.

History: En. Sec. 5, Ch. 137, L. 1937; amd. Sec. 3, Ch. 164, L. 1941; amd. Sec. 4, Ch. 191, L. 1953; amd. Sec. 1, Ch. 164, L. 1955; amd. Sec. 1, Ch. 171, L. 1957; amd. Sec. 4, Ch. 156, L. 1961; amd. Sec. 2, Ch. 269, L. 1963; amd. Sec. 1, Ch. 84, L. 1965; amd. Sec. 1, Ch. 188, L. 1967; amd. Sec. 3, Ch. 4, Ex. L. 1969; amd. Sec. 1, Ch. 38, L. 1971; amd. Sec. 1, Ch. 415, L. 1971; amd. Sec. 1, Ch. 369, L. 1973; amd. Sec. 1, Ch. 498, L. 1973; amd. Sec. 1, Ch. 170, L. 1975; amd. Sec. 1, Ch. 133, L. 1977; R.C.M. 1947, 87-106(intro), (c); amd. Sec. 49, Ch. 397, L. 1979; amd. Sec. 6, Ch. 688, L. 1979; amd. Sec. 1, Ch. 349, L. 1981; amd. Sec. 1, Ch. 409, L. 1985; amd. Sec. 3, Ch. 153, L. 1987; amd. Sec. 17, Ch. 234, L. 1987; amd. Sec. 8, Ch. 61, L. 1999.

Compiler's Comments

1999 Amendment: Chapter 61 in second sentence in (1) after "services" deleted "other than self-employment" and in middle substituted "subsequent to the week" for "subsequent to the date" and inserted third sentence requiring that services meet definition of employment provided in 39-51-203 and 39-51-204. Amendment effective July 1, 1999.

39-51-2305. Disqualification when unemployment due to strike. (1) An individual shall be disqualified for benefits for any week with respect to which the department finds that his total unemployment is due to a strike which exists because of a labor dispute at the factory, establishment, or other premises at which he is or was last employed, provided that this subsection shall not apply if it is shown to the satisfaction of the department that:

(a) he is not participating in or financing or directly interested in the labor dispute which caused the strike; and

(b) he does not belong to a grade or class of workers of which, immediately before the commencement of the strike, there were members employed at the premises at which the strike occurs, any of whom are participating in or financing or directly interested in the dispute.

(2) If in any case separate branches of work which are commonly conducted as separate businesses in separate premises are conducted in separate departments of the same premises, each such department shall, for

the purpose of this section, be deemed to be a separate factory, establishment, or other premises.

(3) If the department, upon investigation, shall find that such labor dispute is caused by the failure or refusal of any employer to conform to the provisions of any law of the state wherein the labor dispute occurs or of the United States pertaining to collective bargaining, hours, wages, or other conditions of work, such labor dispute shall not render the workers ineligible for benefits.

History: En. Sec. 5, Ch. 137, L. 1937; amd. Sec. 3, Ch. 164, L. 1941; amd. Sec. 4, Ch. 191, L. 1953; amd. Sec. 1, Ch. 164, L. 1955; amd. Sec. 1, Ch. 171, L. 1957; amd. Sec. 4, Ch. 156, L. 1961; amd. Sec. 2, Ch. 269, L. 1963; amd. Sec. 1, Ch. 84, L. 1965; amd. Sec. 1, Ch. 188, L. 1967; amd. Sec. 3, Ch. 4, Ex. L. 1969; amd. Sec. 1, Ch. 38, L. 1971; amd. Sec. 1, Ch. 415, L. 1971; amd. Sec. 1, Ch. 369, L. 1973; amd. Sec. 1, Ch. 498, L. 1973; amd. Sec. 1, Ch. 170, L. 1975; amd. Sec. 1, Ch. 133, L. 1977; R.C.M. 1947, 87-106(intro), (d); amd. Sec. 1, Ch. 349, L. 1981; amd. Sec. 1, Ch. 400, L. 1985.

39-51-2306. Disqualification because of receipt of certain other wages, compensation, or benefits. (1) Effective April 1, 1977, an individual shall be disqualified for benefits for any week with respect to which he is receiving or has received payment in the form of:

(a) compensation for disability under the workers' compensation law or the occupational disease law of this or any other state or under a similar law of the United States or under the social security disability law. However, when an injured claimant has ceased to draw compensation benefits and shall have returned to the labor market, he shall then be entitled to receive unemployment compensation benefits under this chapter if he shall be otherwise qualified. Compensation which is received as a payment for a permanent partial disability shall not be computed to be spread over a period of weeks in advance so as to bar the recipient from receiving unemployment compensation benefits under this chapter, provided the recipient has returned to the labor market and is otherwise qualified.

(b) benefits under the Railroad Unemployment Insurance Act or any state unemployment compensation act or similar laws of any state or of the United States. This disqualification does not apply to any week with respect to which an individual is receiving or has received benefits under an unemployment compensation law of another state or of the United States if such benefits are paid pursuant to 39-51-504.

(2) Receipt of any wages, compensation, or benefits as set forth in subsection (1) of this section after payment of unemployment benefits and with respect to the same week for which unemployment benefits were received will thereupon require such individual to repay such unemployment benefits, and the department may collect such unemployment benefits in the same manner as provided for collection of benefits under 39-51-3206.

History: En. Sec. 5, Ch. 137, L. 1937; amd. Sec. 3, Ch. 164, L. 1941; amd. Sec. 4, Ch. 191, L. 1953; amd. Sec. 1, Ch. 164, L. 1955; amd. Sec. 1, Ch. 171, L. 1957; amd. Sec. 4, Ch. 156, L. 1961; amd. Sec. 2, Ch. 269, L. 1963; amd. Sec. 1, Ch. 84, L. 1965; amd. Sec. 1, Ch. 188, L. 1967; amd. Sec. 3, Ch. 4, Ex. L. 1969; amd. Sec. 1, Ch. 38, L. 1971; amd. Sec. 1, Ch. 415, L. 1971; amd. Sec. 1, Ch. 369, L. 1973; amd. Sec. 1, Ch. 498, L. 1973; amd. Sec. 1, Ch. 170, L. 1975; amd. Sec. 1, Ch. 133, L. 1977; R.C.M. 1947, 87-106(intro), (e); amd. Sec. 1, Ch. 349, L. 1981; amd. Sec. 9, Ch. 618, L. 1989.

39-51-2307. Disqualification because of student status. (1) Except as provided in subsection (2) or (3), an individual is disqualified for benefits during the school year (within the autumn, winter, and spring seasons of the year) or the vacation periods within the school year or during any prescribed school term if the individual is a student regularly attending an established educational institution.

(2) An individual attending an adult basic education class 20 hours a week or less while laid off from a job is not disqualified from receiving benefits if the individual is willing to return to work when notified.

(3) An otherwise eligible individual may not be denied benefits for any week because the individual is in training approved by the department, nor may the individual be denied benefits with respect to any week in which the individual is in training approved by the department by reason of the application of provisions in 39-51-2304 or the application of provisions in 39-51-2104(1)(b).

History: En. Sec. 5, Ch. 137, L. 1937; amd. Sec. 3, Ch. 164, L. 1941; amd. Sec. 4, Ch. 191, L. 1953; amd. Sec. 1, Ch. 164, L. 1955; amd. Sec. 1, Ch. 171, L. 1957; amd. Sec. 4, Ch. 156, L. 1961; amd. Sec. 2, Ch. 269, L. 1963; amd. Sec. 1, Ch. 84, L. 1965; amd. Sec. 1, Ch. 188, L. 1967; amd. Sec. 3, Ch. 4, Ex. L. 1969; amd. Sec. 1, Ch. 38, L. 1971; amd. Sec. 1, Ch. 415, L. 1971; amd. Sec. 1, Ch. 369, L. 1973; amd. Sec. 1, Ch. 498, L. 1973; amd. Sec. 1, Ch. 170, L. 1975; amd. Sec. 1, Ch. 133, L. 1977; R.C.M. 1947, 87-106(intro), (f); amd. Sec. 1, Ch. 349, L. 1981; amd. Sec. 13, Ch. 125, L. 1985; amd. Sec. 2, Ch. 404, L. 1993; amd. Sec. 13, Ch. 195, L. 1995.

39-51-2308. Repealed. Sec. 31, Ch. 373, L. 1991.

History: En. Sec. 5, Ch. 137, L. 1937; amd. Sec. 3, Ch. 164, L. 1941; amd. Sec. 4, Ch. 191, L. 1953; amd. Sec. 1, Ch. 164, L. 1955; amd. Sec. 1, Ch. 171, L. 1957; amd. Sec. 4, Ch. 156, L. 1961; amd. Sec. 2, Ch. 269, L. 1963; amd. Sec. 1, Ch. 84, L. 1965; amd. Sec. 1, Ch. 188, L. 1967; amd. Sec. 3, Ch. 4, Ex. L. 1969; amd. Sec. 1, Ch. 38, L. 1971; amd. Sec. 1, Ch. 415, L. 1971; amd. Sec. 1, Ch. 369, L. 1973; amd. Sec. 1, Ch. 498, L. 1973; amd. Sec. 1, Ch. 170, L. 1975; amd. Sec. 1, Ch. 133, L. 1977; R.C.M. 1947, 87-106(intro), (g).

Part 24

Claims for Benefits

Part Cross-References

Administrative rulemaking procedure, Title 2, ch. 4, parts 1 through 3.

General definitions, 39-51-201.

39-51-2401. Claims to be made in accordance with regulations — employers to post and make available copies of such regulations. Claims for benefits shall be made in accordance with such regulations as the department may prescribe. Each employer shall post and maintain printed statements of such regulations in places readily accessible to individuals in his service and shall make available to each such individual at the time he becomes unemployed a printed statement of such regulations. Such printed statements shall be supplied by the department to each employer without cost to him.

History: En. Sec. 6 (a) to (e), Ch. 137, L. 1937; amd. Sec. 2, Ch. 171, L. 1957; amd. Sec. 1, Ch. 262, L. 1973; amd. Sec. 3, Ch. 368, L. 1975; amd. Sec. 1, Ch. 20, L. 1977; R.C.M. 1947, 87-107(a); amd. Sec. 1, Ch. 349, L. 1981.

39-51-2402. Initial determination — redetermination. (1) A representative designated by the department and referred to as a deputy shall promptly examine the claim and, on the basis of the facts the deputy has found, the deputy shall determine whether or not the claim is valid. If the claim is valid, the deputy will determine the week the benefits commence, the weekly benefit amount payable, and the maximum benefit amount. The deputy may refer the claim or any question involved in the claim to an appeals referee who shall make the decision on the claim in accordance with the procedure prescribed in 39-51-2403. With respect to a determination, redetermination, or appeal by a claimant involving wages, the issue must be resolved in accordance with procedures for unemployment insurance benefit claimant appeals as prescribed in 15-2-302 and 15-30-257. The deputy shall promptly notify the claimant and any other interested party of the decision and the reasons for reaching the decision.

(2) The deputy may for good cause reconsider the decision and shall promptly notify the claimant and other interested parties of the amended decision and the reasons for the decision.

(3) A determination or redetermination of an initial or additional claim may not be made under this section unless 5 days' notice of the time and place of the claimant's interview for examination of the claim is mailed to each interested party.

(4) A determination or redetermination is final unless an interested party entitled to notice of the decision applies for reconsideration of the determination or appeals the decision within 10 days after the notification was mailed to the interested party's last-known address. The 10-day period may be extended for good cause.

(5) Except as provided in subsection (6), a redetermination of a claim for benefits may not be made after 2 years from the date of the initial determination.

(6) A redetermination may be made within 3 years from the date of the initial determination of a claim if the initial determination was based on a false claim, misrepresentation, or failure to disclose a material fact by the claimant or the employer.

History: En. Sec. 6 (a) to (e), Ch. 137, L. 1937; amd. Sec. 2, Ch. 171, L. 1957; amd. Sec. 1, Ch. 262, L. 1973; amd. Sec. 3, Ch. 368, L. 1975; amd. Sec. 1, Ch. 20, L. 1977; R.C.M. 1947, 87-107(b), (c); amd. Sec. 1, Ch. 349, L. 1981; amd. Sec. 4, Ch. 153, L. 1987; amd. Sec. 18, Ch. 234, L. 1987; amd. Sec. 10, Ch. 618, L. 1989; amd. Sec. 28, Ch. 491, L. 1997.

39-51-2403. Hearing — decision of appeals referee. Upon appeal of a determination or redetermination under 39-51-2402, an appeals referee shall hold a hearing, which may be conducted by telephone or by videoconference. After the hearing, the appeals referee shall promptly make findings and conclusions and affirm, modify, or reverse the deputy's determination or redetermination. Each interested party must be promptly furnished a copy of the decision and the supporting findings and conclusions. This decision is final unless further review is initiated pursuant to 39-51-2404 within 10 days after notification was mailed to the interested party's last-known address. The 10-day period may be extended for good cause.

History: En. Sec. 6 (a) to (e), Ch. 137, L. 1937; amd. Sec. 2, Ch. 171, L. 1957; amd. Sec. 1, Ch. 262, L. 1973; amd. Sec. 3, Ch. 368, L. 1975; amd. Sec. 1, Ch. 20, L. 1977; R.C.M. 1947, 87-107(e); amd. Sec. 19, Ch. 234, L. 1987; amd. Sec. 14, Ch. 195, L. 1995.

39-51-2404. Appeal to board procedure. An interested party who is dissatisfied with a decision of an appeals referee may appeal to the board. The department shall promptly transmit all records pertinent to the appeal to the board. The appeal hearing may be conducted by telephone or by videoconference. When a decision is rendered by the board and copies of the decision are mailed to all interested parties, including the department, that decision is final unless an interested party requests a rehearing or initiates judicial review by filing a petition in district court within 30 days of the date of mailing of the board's decision to the party's last-known address.

History: En. Sec. 6 (a) to (e), Ch. 137, L. 1937; amd. Sec. 2, Ch. 171, L. 1957; amd. Sec. 1, Ch. 262, L. 1973; amd. Sec. 3, Ch. 368, L. 1975; amd. Sec. 1, Ch. 20, L. 1977; R.C.M. 1947, 87-107(g); amd. Sec. 1, Ch. 349, L. 1981; amd. Sec. 15, Ch. 195, L. 1995.

39-51-2405. Prompt payment of claims. (1) Notwithstanding any provision in 39-51-2402 or 39-51-2404, benefits shall be paid promptly in accordance with a determination or redetermination under 39-51-2402 or the decision of an appeals referee, the board, or a reviewing court under 39-51-2404 upon the issuance of such determination, redetermination, or decision regardless of the pendency of the period to apply for reconsideration, file an appeal, or petition for judicial review that is provided with respect thereto in 39-51-2404, as the case may be, or the pendency of any such application, filing, or petition, unless and until such determination, redetermination, or decision has been modified or reversed by a subsequent redetermination or decision, in which event benefits shall be paid or denied for weeks of unemployment thereafter in accordance with such modifying or reversing redetermination or decision.

(2) If a deputy's determination or redetermination allowing benefits is affirmed in any amount by an appeals referee or by the board or if a decision of an appeals referee allowing benefits is affirmed in any amount by the board, such benefits shall be paid promptly regardless of any further appeal or the disposition of such appeal and no injunction, supersedeas, stay, or other writ or process suspending the payment of such benefits shall be issued by the board or any court. Benefits shall not be paid for any weeks of unemployment involved in such modification or reversal that begins after such final decision.

History: En. Sec. 6 (a) to (e), Ch. 137, L. 1937; amd. Sec. 2, Ch. 171, L. 1957; amd. Sec. 1, Ch. 262, L. 1973; amd. Sec. 3, Ch. 368, L. 1975; amd. Sec. 1, Ch. 20, L. 1977; R.C.M. 1947, 87-107(f).

39-51-2406. Continuing jurisdiction of department over claims. The department shall have continuing jurisdiction over all claims filed for benefits to revise, modify, alter, cancel, and amend all orders, findings, and determinations made therein at any time and shall not lose such jurisdiction unless and until the jurisdiction of such claim and subject matter thereof has been taken by a court of competent jurisdiction in a proceedings filed therein as provided for in subsections (2) through (6) of 39-51-2410.

History: En. Sec. 6 (f) to (i), Ch. 137, L. 1937; Subd. (a) amd. Sec. 2, Ch. 233, L. 1943; amd. Sec. 4, Ch. 368, L. 1975; amd. Sec. 1, Ch. 24, L. 1977; amd. Sec. 1, Ch. 201, L. 1977; R.C.M. 1947, 87-108(part); amd. Sec. 1, Ch. 349, L. 1981.

39-51-2407. Procedure for disputed claims to be prescribed by regulation — conduct of hearing or appeal. (1) The manner in which disputed claims must be presented, the reports on disputed claims required from the claimant and from employers, and the conduct of hearings and appeals must be in accordance with regulations prescribed by the department or the board for determining the rights of the parties, whether or not the regulations conform to common law or statutory rules of evidence and other technical rules or procedure.

(2) A hearing or appeal may be conducted by telephone or by videoconference.

History: En. Sec. 6 (f) to (i), Ch. 137, L. 1937; Subd. (a) amd. Sec. 2, Ch. 233, L. 1943; amd. Sec. 4, Ch. 368, L. 1975; amd. Sec. 1, Ch. 24, L. 1977; amd. Sec. 1, Ch. 201, L. 1977; R.C.M. 1947, 87-108(part); amd. Sec. 1, Ch. 349, L. 1981; amd. Sec. 16, Ch. 195, L. 1995.

39-51-2408. Disputed claim — records of all proceedings to be kept. A full and complete record shall be kept of all proceedings in connection with a disputed claim. All testimony at any hearing upon a disputed claim shall be recorded but need not be transcribed unless the disputed claim is further appealed.

History: En. Sec. 6 (f) to (i), Ch. 137, L. 1937; Subd. (a) amd. Sec. 2, Ch. 233, L. 1943; amd. Sec. 4, Ch. 368, L. 1975; amd. Sec. 1, Ch. 24, L. 1977; amd. Sec. 1, Ch. 201, L. 1977; R.C.M. 1947, 87-108(part).

39-51-2409. Witness fees. Witnesses subpoenaed pursuant to 39-51-2406 through 39-51-2410 shall be allowed fees at a rate fixed by the department. Such fees shall be deemed a part of the expense of administering this chapter.

History: En. Sec. 6 (f) to (i), Ch. 137, L. 1937; Subd. (a) amd. Sec. 2, Ch. 233, L. 1943; amd. Sec. 4, Ch. 368, L. 1975; amd. Sec. 1, Ch. 24, L. 1977; amd. Sec. 1, Ch. 201, L. 1977; R.C.M. 1947, 87-108(b); amd. Sec. 1, Ch. 349, L. 1981.

39-51-2410. Finality of board's decision — judicial review. (1) Any decision of the board in the absence of an appeal therefrom as herein provided shall become final 30 days after the date of notification or mailing thereof and judicial review shall be permitted only after any party claiming to be aggrieved has exhausted all remedies before the board. The department is deemed to be a party to any judicial action involving any such decision and may be represented in any such action by an attorney employed by the department or, at the department's request, by the attorney general.

(2) Within 30 days after the date of notification or mailing of the decision of the board, any party aggrieved thereby may secure judicial review thereof by commencing an action in the district court of the county in which said party resides and in which action any other party to the proceeding before the board shall be made a defendant. In such action a petition, which need not be verified but which shall state the grounds upon which a review is sought, shall be served upon the commissioner of labor and industry and all interested parties in the manner provided in the Montana Rules of Civil Procedure.

(3) The department shall certify and file with said court all documents and papers and a record of all testimony taken in the matter, together with the board's findings of fact and decision. The board may also in its discretion certify to such court questions of law involved in any decision by it.

(4) Whenever the department seeks review of a decision of the board, all interested parties shall be served with a copy of its petition together with all documents filed with the court.

(5) In any judicial proceeding under 39-51-2406 through 39-51-2410, the findings of the board as to the facts, if supported by evidence and in the absence of fraud, shall be conclusive and the jurisdiction of said court shall be confined to questions of law. Such action and the questions so certified shall be heard in

a summary manner and shall be given precedence over all other civil cases except cases arising under the workers' compensation law of this state.

(6) An appeal may be taken from the decision of the district court to the supreme court of Montana in the same manner, but not inconsistent with the provisions of this chapter, as is provided in civil cases. It shall not be necessary in any judicial proceeding under this section to enter exceptions to the rulings of the board and no bond shall be required for entering such appeal. Upon the final determination of such judicial proceeding, the department shall enter an order in accordance with such determination.

History: En. Sec. 6 (f) to (i), Ch. 137, L. 1937; Subd. (a) amd. Sec. 2, Ch. 233, L. 1943; amd. Sec. 4, Ch. 368, L. 1975; amd. Sec. 1, Ch. 24, L. 1977; amd. Sec. 1, Ch. 201, L. 1977; R.C.M. 1947, 87-108(c), (d); amd. Sec. 4, Ch. 349, L. 1981; amd. Sec. 14, Ch. 125, L. 1985; amd. Sec. 20, Ch. 234, L. 1987.

Part 25

Extended Benefits

Part Cross-References

General definitions, 39-51-201, 39-51-2501.

39-51-2501. Definitions. As used in this part, unless the context clearly requires otherwise, the following definitions apply:

(1) "Eligibility period", relating to extended benefits, means the period consisting of the weeks in the individual's benefit year which begin in an extended benefit period and, if the individual's benefit year ends within such extended benefit period, any weeks thereafter which begin in such period.

(2) "Exhaustee" means an individual who, with respect to any week of unemployment in the eligibility period:

(a) has received, prior to such week, all of the regular benefits that were available under this chapter or any other state law, including dependents' allowances and benefits payable to federal civilian employees and ex-service personnel under 5 U.S.C. chapter 85, in the current benefit year that includes such week; provided that, for the purposes of this subsection, an individual shall be deemed to have received all of the regular benefits that were available although, as a result of a pending appeal with respect to wages that were not considered in the original monetary determination of the benefit year, the individual may subsequently be determined to be entitled to added regular benefits;

(b) the benefit year having expired prior to such week, has no or insufficient wages on the basis of which the individual could establish a new benefit year that would include such week;

(c) has no right to unemployment benefits or allowances, as the case may be, under the Railroad Unemployment Insurance Act and such other federal laws as are specified in regulations issued by the U.S. secretary of labor; and

(d) has not received and is not seeking unemployment benefits under the unemployment compensation law of Canada, but if the individual is seeking such benefits and the appropriate agency finally determines that the individual is not entitled to benefits under such law, the individual is considered an exhaustee.

(3) "Extended benefit period" means a period which:

(a) begins with the third week after a week for which there is a state "on" indicator, provided that no extended benefit period may begin by reason of a state "on" indicator before the 14th week following the end of a prior extended benefit period which was in effect with respect to this state; and

(b) ends with the third week after the first week for which there is a state "off" indicator or the 13th consecutive week of such period.

(4) "Extended benefits" means benefits, including benefits payable to federal civilian employees and to ex-service personnel pursuant to 5 U.S.C. chapter 85, payable to an individual under the provisions of this part for weeks of unemployment in the individual's eligibility period.

(5) (a) "Rate of insured unemployment", for purposes of 39-51-2504 and 39-51-2505, means the percentage derived by dividing the average weekly number of individuals filing claims for regular benefits in this state for weeks of unemployment with respect to the most recent 13-consecutive-week period, as determined by the department on the basis of its reports to the U.S. secretary of labor, by the average monthly employment covered under this chapter for the first 4 of the most recent 6 completed calendar quarters ending before the end of such 13-week period.

(b) Computations required by the provisions of subsection (5)(a) shall be made by the department in accordance with regulations prescribed by the U.S. secretary of labor.

(6) "Regular benefits" means benefits payable to an individual under this chapter or under any other state law, including benefits payable to federal civilian employees and to ex-service personnel pursuant to 5 U.S.C. chapter 85, other than extended benefits.

(7) "State law" means the unemployment insurance law of any state approved by the U.S. secretary of labor under section 3304 of the Internal Revenue Code of 1954.

History: En. Sec. 3 (d), Ch. 137, L. 1937; amd. Sec. 1, Ch. 137, L. 1939; amd. Sec. 1, Ch. 164, L. 1941; amd. Sec. 1, Ch. 245, L. 1947; amd. Sec. 1, Ch. 178, L. 1949; amd. Sec. 2, Ch. 191, L. 1953; amd. Sec. 3, Ch. 140, L. 1957; amd. Sec. 2, Ch. 156, L. 1961; amd. Sec. 2, Ch. 4, Ex. L. 1969; amd. Sec. 1, Ch. 104, L. 1971; amd. Sec. 1, Ch. 3, L. 1975; amd. Sec. 1, Ch. 368, L. 1975; amd. Sec. 2, Ch. 528, L. 1977; R.C.M. 1947, 87-104(a)(1), (a)(6) thru (a)(11), (f)(2); amd. Sec. 1, Ch. 349, L. 1981; amd. Sec. 1, Ch. 9, Sp. L. 1981; amd. Sec. 4, Ch. 84, L. 1983; amd. Sec. 21, Ch. 234, L. 1987.

39-51-2502. Repealed. Sec. 5, Ch. 9, Sp. L. 1981.

History: En. Sec. 3 (d), Ch. 137, L. 1937; amd. Sec. 1, Ch. 137, L. 1939; amd. Sec. 1, Ch. 164, L. 1941; amd. Sec. 1, Ch. 245, L. 1947; amd. Sec. 1, Ch. 178, L. 1949; amd. Sec. 2, Ch. 191, L. 1953; amd. Sec. 3, Ch. 140, L. 1957; amd. Sec. 2, Ch. 156, L. 1961; amd. Sec. 2, Ch. 4, Ex. L. 1969; amd. Sec. 1, Ch. 104, L. 1971; amd. Sec. 1, Ch. 3, L. 1975; amd. Sec. 1, Ch. 368, L. 1975; amd. Sec. 2, Ch. 528, L. 1977; R.C.M. 1947, 87-104(a)(2).

39-51-2503. Repealed. Sec. 5, Ch. 9, Sp. L. 1981.

History: En. Sec. 3 (d), Ch. 137, L. 1937; amd. Sec. 1, Ch. 137, L. 1939; amd. Sec. 1, Ch. 164, L. 1941; amd. Sec. 1, Ch. 245, L. 1947; amd. Sec. 1, Ch. 178, L. 1949; amd. Sec. 2, Ch. 191, L. 1953; amd. Sec. 3, Ch. 140, L. 1957; amd. Sec. 2, Ch. 156, L. 1961; amd. Sec. 2, Ch. 4, Ex. L. 1969; amd. Sec. 1, Ch. 104, L. 1971; amd. Sec. 1, Ch. 3, L. 1975; amd. Sec. 1, Ch. 368, L. 1975; amd. Sec. 2, Ch. 528, L. 1977; R.C.M. 1947, 87-104(a)(3).

39-51-2504. State "on" indicator — when. There is a state "on" indicator for this state for a week if the department determines, in accordance with the regulations of the U.S. secretary of labor, that:

(1) (a) the rate of insured unemployment equals or exceeds 5% for any such week and the immediately preceding 12 weeks; and

(b) the insured unemployment rate equals or exceeds 120% of the average of such rates for the corresponding 13-week period ending in each of the preceding 2 calendar years; or

(2) if the rate of insured unemployment for such week is 5% or more but the average of such rates for the corresponding 13-week period ending in each of the preceding 2 calendar years is less than 120%, the insured unemployment rate for such week and the immediately preceding 12 weeks is 6% or more.

History: En. Sec. 3 (d), Ch. 137, L. 1937; amd. Sec. 1, Ch. 137, L. 1939; amd. Sec. 1, Ch. 164, L. 1941; amd. Sec. 1, Ch. 245, L. 1947; amd. Sec. 1, Ch. 178, L. 1949; amd. Sec. 2, Ch. 191, L. 1953; amd. Sec. 3, Ch. 140, L. 1957; amd. Sec. 2, Ch. 156, L. 1961; amd. Sec. 2, Ch. 4, Ex. L. 1969; amd. Sec. 1, Ch. 104, L. 1971; amd. Sec. 1, Ch. 3, L. 1975; amd. Sec. 1, Ch. 368, L. 1975; amd. Sec. 2, Ch. 528, L. 1977; R.C.M. 1947, 87-104(a)(4); amd. Sec. 1, Ch. 349, L. 1981; amd. Sec. 2, Ch. 9, Sp. L. 1981.

39-51-2505. State "off" indicator — when. There is a state "off" indicator for this state for a week if the department determines, in accordance with the regulations of the U.S. secretary of labor, that:

(1) for the period consisting of such week and the immediately preceding 12 weeks the rate of insured unemployment (not seasonally adjusted) under this chapter is less than 5%; or

(2) the average of such rates for the corresponding 13-week period ending in each of the preceding 2 calendar years is less than 120%.

History: En. Sec. 3 (d), Ch. 137, L. 1937; amd. Sec. 1, Ch. 137, L. 1939; amd. Sec. 1, Ch. 164, L. 1941; amd. Sec. 1, Ch. 245, L. 1947; amd. Sec. 1, Ch. 178, L. 1949; amd. Sec. 2, Ch. 191, L. 1953; amd. Sec. 3, Ch. 140, L. 1957; amd. Sec. 2, Ch. 156, L. 1961; amd. Sec. 2, Ch. 4, Ex. L. 1969; amd. Sec. 1, Ch. 104, L. 1971; amd. Sec. 1, Ch. 3, L. 1975; amd. Sec. 1, Ch. 368, L. 1975; amd. Sec. 2, Ch. 528, L. 1977; R.C.M. 1947, 87-104(a)(5); amd. Sec. 1, Ch. 349, L. 1981; amd. Sec. 3, Ch. 9, Sp. L. 1981.

39-51-2506. Beginning and termination of extended benefit period — announcement of. Whenever an extended benefit period is to become effective in this state as a result of a state "on" indicator, or an extended benefit period is to be terminated in this state as a result of state "off" indicators, the department shall make an appropriate public announcement.

History: En. Sec. 3 (d), Ch. 137, L. 1937; amd. Sec. 1, Ch. 137, L. 1939; amd. Sec. 1, Ch. 164, L. 1941; amd. Sec. 1, Ch. 245, L. 1947; amd. Sec. 1, Ch. 178, L. 1949; amd. Sec. 2, Ch. 191, L. 1953; amd. Sec. 3, Ch. 140, L. 1957; amd. Sec. 2, Ch. 156, L. 1961; amd. Sec. 2, Ch. 4, Ex. L. 1969; amd. Sec. 1, Ch. 104, L. 1971; amd. Sec. 1, Ch. 3, L. 1975; amd. Sec. 1, Ch. 368, L. 1975; amd. Sec. 2, Ch. 528, L. 1977; R.C.M. 1947, 87-104(f)(1); amd. Sec. 1, Ch. 349, L. 1981; amd. Sec. 4, Ch. 9, Sp. L. 1981.

39-51-2507. Effect of state law provisions relating to regular benefits on claims for and the payment of extended benefits. Except when the result would be inconsistent with the other provisions of this part, as provided in the regulations of the department, the provisions of this chapter which apply to claims for or the payment of regular benefits shall apply to claims for and the payment of extended benefits.

History: En. Sec. 3 (d), Ch. 137, L. 1937; amd. Sec. 1, Ch. 137, L. 1939; amd. Sec. 1, Ch. 164, L. 1941; amd. Sec. 1, Ch. 245, L. 1947; amd. Sec. 1, Ch. 178, L. 1949; amd. Sec. 2, Ch. 191, L. 1953; amd. Sec. 3, Ch. 140, L. 1957; amd. Sec. 2, Ch. 156, L. 1961; amd. Sec. 2, Ch. 4, Ex. L. 1969; amd. Sec. 1, Ch. 104, L. 1971; amd. Sec. 1, Ch. 3, L. 1975; amd. Sec. 1, Ch. 368, L. 1975; amd. Sec. 2, Ch. 528, L. 1977; R.C.M. 1947, 87-104(b); amd. Sec. 1, Ch. 349, L. 1981.

39-51-2508. Eligibility requirements for extended benefits — disqualifications — acceptance of suitable work. (1) An individual is eligible to receive extended benefits with respect to any week of unemployment in this eligibility period only if the department finds with respect to the week that the individual:

(a) is an exhaustee, as defined in 39-51-2501;

(b) has been paid total wages for employment in the base period, as defined in 39-51-201, in an amount not less than:

(i) 1.5 times the wages earned in the calendar quarter in which wages were the highest during the base period;

(ii) 40 times the individual's most recent weekly benefit amount; or

(iii) insured wages for 20 weeks of work;

(c) is not disqualified for the receipt of regular benefits pursuant to part 23 of this chapter and, if disqualified, the individual satisfies the requirements for requalification in that part; and

(d) has satisfied the other requirements of this chapter for the receipt of regular benefits that are applicable to individuals claiming extended benefits.

(2) In addition to the disqualifications provided for in subsection (1)(c), an individual is disqualified for extended benefits if the individual fails to seek work. The disqualification continues for the week in which the failure occurs and until the individual has performed services, other than self-employment, for which remuneration is received equal to or in excess of the individual's weekly benefit amount in 4 separate weeks subsequent to the date the act causing the disqualification occurred.

(3) A regular benefit claimant who is disqualified for gross misconduct under 39-51-2303(2) may not be paid extended benefits unless the individual has earned at least eight times the weekly benefit amount after the date of the disqualification.

(4) A regular benefit claimant who voluntarily leaves work to attend school and, pursuant to 39-51-2302(3), requalifies for regular benefits may not be paid extended benefits unless the individual has earned at least six times the weekly benefit amount.

(5) For the purposes of determining eligibility for extended benefits, the department shall by rule define the term "suitable work". The definition must be in accordance with the requirements of 26 U.S.C. 3304.

History: En. Sec. 3 (d), Ch. 137, L. 1937; amd. Sec. 1, Ch. 137, L. 1939; amd. Sec. 1, Ch. 164, L. 1941; amd. Sec. 1, Ch. 245, L. 1947; amd. Sec. 1, Ch. 178, L. 1949; amd. Sec. 2, Ch. 191, L. 1953; amd. Sec. 3, Ch. 140, L. 1957; amd. Sec. 2, Ch. 156, L. 1961; amd. Sec. 2, Ch. 4, Ex. L. 1969; amd. Sec. 1, Ch. 104, L. 1971; amd. Sec. 1, Ch. 3, L. 1975; amd. Sec. 1, Ch. 368, L. 1975; amd. Sec. 2, Ch. 528, L. 1977; R.C.M. 1947, 87-104(c); amd. Sec. 1, Ch. 99, L. 1981; amd. Sec. 1, Ch. 349, L. 1981; amd. Sec. 1, Ch. 272, L. 1983; amd. Sec. 5, Ch. 171, L. 1993; amd. Sec. 175, Ch. 42, L. 1997.

39-51-2509. Weekly extended benefit amount. The weekly extended benefit amount payable to an individual for a week of total unemployment in his eligibility period shall be an amount equal to the weekly benefit amount payable to him during his applicable benefit year.

History: En. Sec. 3 (d), Ch. 137, L. 1937; amd. Sec. 1, Ch. 137, L. 1939; amd. Sec. 1, Ch. 164, L. 1941; amd. Sec. 1, Ch. 245, L. 1947; amd. Sec. 1, Ch. 178, L. 1949; amd. Sec. 2, Ch. 191, L. 1953; amd. Sec. 3, Ch. 140, L. 1957; amd. Sec. 2, Ch. 156, L. 1961; amd. Sec. 2, Ch. 4, Ex. L. 1969; amd. Sec. 1, Ch. 104, L. 1971; amd. Sec. 1, Ch. 3, L. 1975; amd. Sec. 1, Ch. 368, L. 1975; amd. Sec. 2, Ch. 528, L. 1977; R.C.M. 1947, 87-104(d).

39-51-2510. Total extended benefit amount. The total extended benefit amount payable to any eligible individual with respect to his applicable benefit year shall be the least of the following amounts:

(1) 50% of the total amount of regular benefits which were payable to him under this chapter in his applicable benefit year;

(2) 13 times his weekly benefit amount which was payable to him under this chapter for a week of total unemployment in the applicable benefit year.

History: En. Sec. 3 (d), Ch. 137, L. 1937; amd. Sec. 1, Ch. 137, L. 1939; amd. Sec. 1, Ch. 164, L. 1941; amd. Sec. 1, Ch. 245, L. 1947; amd. Sec. 1, Ch. 178, L. 1949; amd. Sec. 2, Ch. 191, L. 1953; amd. Sec. 3, Ch. 140, L. 1957; amd. Sec. 2, Ch. 156, L. 1961; amd. Sec. 2, Ch. 4, Ex. L. 1969; amd. Sec. 1, Ch. 104, L. 1971; amd. Sec. 1, Ch. 3, L. 1975; amd. Sec. 1, Ch. 368, L. 1975; amd. Sec. 2, Ch. 528, L. 1977; R.C.M. 1947, 87-104(e).

39-51-2511. Extended benefits filed interstate. Except during the first 2 weeks of an extended benefit period, no extended benefits will be paid to an individual filing from a state in which the state indicator is "off".

History: En. Sec. 1, Ch. 58, L. 1981.

Part 26
Trade Readjustment

39-51-2601. Limitations on weeks of combined extended benefits and trade readjustment allowances. Notwithstanding any other provisions of this chapter, if the benefit year of any individual ends within an extended benefit period, the remaining balance of extended benefits that such individual would but for this section be entitled to receive in that extended benefit period, with respect to weeks of unemployment beginning after the end of the benefit year, shall be reduced (but not below zero) by the product of the number of weeks for which the individual received trade readjustment allowances within that benefit year, multiplied by the individual's weekly benefit amount for extended benefits.

History: En. Sec. 2, Ch. 7, Sp. L. 1981.

39-51-2602. Approved training under federal programs. (1) Notwithstanding any other provisions of this chapter, an otherwise eligible individual may not be denied benefits for any week:

(a) because of participation in training approved under Section 236(a)(1) of the federal Trade Act of 1974 (19 U.S.C. 2296) or under Title III of the federal Job Training Partnership Act (29 U.S.C. 1501, et seq.);

(b) because of participation in approved training described in subsection (1)(a) by reason of leaving work to enter the training if the work left is not suitable employment; or

(c) because of the application to any such week in training of provisions in this chapter or any federal unemployment insurance law administered by this agency, relating to availability for work, active search for work, or refusal to accept work.

(2) For purposes of this section, "suitable employment" means work of a substantially equal or higher skill level than the individual's past adversely affected employment, as defined for purposes of the federal Trade Act of 1974 and the federal Job Training Partnership Act, and for which the wages are not less than 80% of the individual's average weekly wage as determined for the

purposes of the federal Trade Act of 1974 and the federal Job Training Partnership Act.

History: En. Sec. 1, Ch. 7, Sp. L. 1981; amd. Sec. 19, Ch. 373, L. 1991; amd. Sec. 176, Ch. 42, L. 1997.

Parts 27 through 30 reserved

Part 31

Protections and Limitations on Rights and Benefits

Part Cross-References

Self-incrimination, Art. II, sec. 25, Mont. Const.

General definitions, 39-51-201.

Misdemeanor defined, 45-2-101.

39-51-3101. Protection against self-incrimination. No person shall be excused from attending and testifying or from producing books, papers, correspondence, memoranda, and other records before the department or board, the chairman of an appeal tribunal, or any duly authorized representative of either of them or in obedience to the subpoena of the department or board or any member thereof or any duly authorized representative of the department in any cause or proceeding before the department or board on the ground that the testimony or evidence, documentary or otherwise, required of him may tend to incriminate him or subject him to a penalty or forfeiture, but no individual shall be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter, or thing concerning which he is compelled, after having claimed his privilege against self-incrimination, to testify or produce evidence, documentary or otherwise, except that such individual so testifying shall not be exempt from prosecution and punishment for perjury committed in so testifying.

History: En. Subd. (h), Sec. 11, Ch. 137, L. 1937; amd. Sec. 16, Ch. 368, L. 1975; R.C.M. 1947, 87-127; amd. Sec. 1, Ch. 349, L. 1981.

39-51-3102. Certain agreements in violation of chapter void. (1) Any agreement by an individual to waive, release, or commute his rights to benefits or any other rights under this chapter shall be void.

(2) Any agreement by any individual in the employ of any person or concern to pay all or any portion of an employer's contributions required under this chapter from such employer shall be void.

History: En. Subd. (a), Sec. 15, Ch. 137, L. 1937; amd. Sec. 9, Ch. 164, L. 1941; R.C.M. 1947, 87-141(part).

39-51-3103. Employer prohibited from making, requiring, or accepting deduction from wages or requiring or accepting waiver of rights under chapter — penalty for violation. (1) No employer shall directly or indirectly make or require or accept any deduction from wages to finance the employer's contributions required from him or require or accept any waiver of any right hereunder by an individual in his employ.

(2) Any employer or officer or agent of an employer who violates any provision of this section or 39-51-3102 shall, for each offense, be fined not more than $1,000 or be imprisoned for not more than 6 months or both.

History: En. Subd. (a), Sec. 15, Ch. 137, L. 1937; amd. Sec. 9, Ch. 164, L. 1941; R.C.M. 1947, 87-141(part).

39-51-3104. Limitation of fees in claim for benefits — penalty for violation. (1) No individual claiming benefits shall be charged fees of any kind in any proceeding under this chapter by the department or its representatives or by any court or any officer thereof.

(2) Any individual claiming benefits in any proceeding before the chairman of an appeal tribunal or the department or its representatives, the board, or a court may be represented by counsel or other duly authorized agent, but no such counsel or agents shall either charge or receive for such services more than an amount approved by the department or board.

(3) Any person who violates any provision of this section shall, for each such offense, be fined not more than $500 or imprisoned for not more than 6 months or both.

History: En. Subd. (b), Sec. 15, Ch. 137, L. 1937; amd. Sec. 9, Ch. 164, L. 1941; amd. Sec. 29, Ch. 368, L. 1975; R.C.M. 1947, 87-142; amd. Sec. 1, Ch. 349, L. 1981.

39-51-3105. Assignment, pledge, or encumbrance of right to benefits void — benefits exempt from levy, execution, attachment, or other remedy for collection of debt — exception. Any assignment, pledge, or encumbrance of any right to benefits that are or may become due or payable under this chapter is void, and the rights to benefits are exempt from levy, execution, attachment, or any other remedy provided for the collection of debt. Benefits received by an individual, as long as they are not mingled with other funds of the recipient, are exempt from any remedy for the collection of all debts except as provided in 39-51-2207, 39-51-2208, 39-51-3106, 39-51-3107, and 39-51-3206. Any waiver of an exemption provided for in this section is void.

History: En. Subd. (c), Sec. 15, Ch. 137, L. 1937; amd. Sec. 9, Ch. 164, L. 1941; R.C.M. 1947, 87-143; amd. Sec. 22, Ch. 234, L. 1987; amd. Sec. 6, Ch. 171, L. 1993; amd. Sec. 10, Ch. 60, L. 1997; amd. Sec. 9, Ch. 61, L. 1999.

Compiler's Comments

1999 Amendment: Chapter 61 near end of second sentence inserted reference to 39-51-3107. Amendment effective July 1, 1999.

39-51-3106. Child support interception of unemployment benefits. (1) For purposes of this section, the following definitions apply:

(a) "Child support obligations" includes only obligations that are being enforced pursuant to a plan described in section 454 of the Social Security Act (42 U.S.C. 654) that has been approved by the secretary of health and human services under Part D of Title IV of the Social Security Act (now Subchapter IV).

(b) "State or local child support enforcement agency" means any agency of a state or political subdivision operating pursuant to a plan provided for in subsection (1)(a).

(c) "Unemployment benefits" means any benefits payable under the Montana unemployment insurance law, including amounts payable by the department pursuant to an agreement under any federal law providing for benefits, assistance, or allowances with respect to unemployment.

(2) An individual filing a new claim for unemployment benefits shall, at the time of filing the claim, disclose whether or not the individual owes child support obligations. If an individual discloses that the individual owes child support obligations and the individual is determined to be eligible for

unemployment benefits, the department shall notify the state or local child support enforcement agency enforcing the obligation that the individual has been determined to be eligible for unemployment benefits.

(3) The department shall deduct and withhold from any unemployment benefits payable to an individual owing child support obligations:

(a) the amount specified by the individual to the department to be deducted and withheld under this subsection if neither subsection (3)(b) nor (3)(c) is applicable;

(b) the amount, if any, determined pursuant to an agreement submitted to the department under section 454(19)(B)(i) of the Social Security Act (42 U.S.C. 654(19)(B)(i)) by the state or local child support enforcement agency, unless subsection (3)(c) is applicable; or

(c) any amount otherwise required to be deducted and withheld from unemployment benefits pursuant to legal process, as that term is defined in section 462(e) of the Social Security Act (42 U.S.C. 662(e)), properly served upon the department.

(4) The department shall pay any amount deducted and withheld under subsection (3) to the appropriate state or local child support enforcement agency.

(5) Deductions may be made pursuant to this section only if appropriate arrangements have been made for reimbursement by the state or local child support enforcement agency for the administrative costs incurred by the department under this section.

(6) Any amount deducted and withheld under subsection (3) must be treated as if it were paid to the individual as unemployment benefits and paid by the individual to the state or local child support enforcement agency in satisfaction of the individual's child support obligations.

History: En. Sec. 1, Ch. 8, Sp. L. 1981; amd. Sec. 5, Ch. 84, L. 1983; amd. Sec. 177, Ch. 42, L. 1997.

39-51-3107. Internal revenue levy — withholding of unemployment benefits to repay federal tax obligations. (1) The internal revenue service may levy against an individual's unemployment benefits if the individual:

(a) is liable for taxes, interest, or penalties owed to the internal revenue service; and

(b) has not paid the taxes, interest, or penalties in subsection (1)(a) within 10 days of receiving a notice and demand for repayment from the internal revenue service.

(2) Pursuant to 26 U.S.C. 6331(h)(2)(c), any amount payable as unemployment benefits may be levied against until the levy is released.

(3) The levy may be implemented electronically by the department and the internal revenue service.

(4) After receiving notice of a levy from the internal revenue service, the department shall deduct and withhold up to 15% from any unemployment benefits payable to the individual owing money to the internal revenue service. The amount withheld must be determined by the internal revenue service in accordance with 26 U.S.C. 6331(h)(2)(c).

(5) The department shall pay any amount deducted and withheld pursuant to this section to the internal revenue service on behalf of the

individual. Any amount deducted and withheld must be treated as if it were paid to the individual as unemployment benefits and then paid by the individual to the internal revenue service in satisfaction of the individual's federal tax obligations.

History: En. Sec. 1, Ch. 61, L. 1999.

Compiler's Comments

Effective Date: Section 14, Ch. 61, L. 1999, provided that this section is effective July 1, 1999.

Part 32
General Penalties

Part Cross-References

General definitions, 39-51-201.

39-51-3201. Making false statement or representation or failing to disclose material fact in order to obtain or increase benefits — administrative penalty and remedy. (1) A person who makes a false statement or representation knowing it to be false or who knowingly fails to disclose a material fact in order to obtain or increase any benefit or other payment under this chapter or under an employment security law of any other state or territory or the federal government, either for the individual or for any other person, is:

(a) disqualified for benefits for a period of not more than 52 weeks, beginning with the first compensable week following the date of determination by the department, with the length of time of the disqualification to be determined by the department in accordance with the severity of each case; and

(b) required to repay to the department, either directly or as authorized by the department, by offset of future benefits to which the individual may be entitled, or by a combination of both methods, a sum equal to the amount wrongfully received by the individual, plus the department may assess a penalty not to exceed 100% of the fraudulently obtained benefits. Future benefits may not be used to offset the penalty due. However, the individual is not required to repay any amount wrongfully obtained more than 5 years prior to the date of the department's determination that the individual made false statements, willful nondisclosure, or misrepresentation.

(2) An individual, other than a person with a bona fide disability that prevents the individual from making or filing a claim for benefits on the individual's own behalf, who allows or authorizes another person to make or file a claim for benefits on the individual's behalf is subject to the penalties prescribed in subsection (1).

(3) All money accruing from the penalty under subsection (1)(b) must be deposited in the federal special revenue account. Money deposited in that account may be appropriated to the department to be used to detect and collect unpaid taxes and overpayments of benefits to the extent that federal grant revenues are inadequate for these purposes. Money in the account not appropriated for these purposes must be transferred by the department to the unemployment insurance trust fund at the end of each fiscal year.

History: En. Sec. 16, Ch. 137, L. 1937; amd. Sec. 1, Ch. 150, L. 1951; amd. Sec. 7, Ch. 164, L. 1955; amd. Sec. 10, Ch. 156, L. 1961; amd. Sec. 1, Ch. 38, L. 1969; amd. Sec. 1, Ch. 17, L. 1975; amd. Sec. 30, Ch. 368, L. 1975; amd. Sec. 1, Ch. 240, L. 1977; R.C.M. 1947, 87-145(1); amd. Sec. 1, Ch. 349, L. 1981; amd. Sec. 1, Ch. 226, L. 1985; amd. Sec. 27, Ch. 373, L. 1991; amd. Sec. 11, Ch. 60, L. 1997.

39-51-3202. Making false statement or representation or failing to disclose material fact in order to obtain or increase benefits — criminal penalty. (1) A person who, in order to obtain or increase for personal gain or for any other person benefits under this chapter or under an employment security law of any other state or territory or the federal government, knowingly makes a false statement or representation or knowingly fails to disclose a material fact is guilty of a crime under 45-7-203, and the department may cause criminal proceedings to be initiated against the person.

(2) A person will be required to repay to the department an amount as determined by 39-51-3201(1)(b).

(3) For purposes of this section, restitution awarded under this section must include a sum equal to the amount wrongfully received, plus the department may assess a penalty not to exceed 100% of the amount wrongfully received. All money accruing from the penalty must be deposited in the federal special revenue account. Money deposited in that account may be appropriated to the department to be used to detect and collect unpaid taxes and overpayments of benefits to the extent that federal grant revenues are inadequate for these purposes. Money in the account not appropriated for these purposes must be transferred by the department to the unemployment insurance trust fund at the end of each fiscal year.

History: En. Sec. 16, Ch. 137, L. 1937; amd. Sec. 1, Ch. 150, L. 1951; amd. Sec. 7, Ch. 164, L. 1955; amd. Sec. 10, Ch. 156, L. 1961; amd. Sec. 1, Ch. 38, L. 1969; amd. Sec. 1, Ch. 17, L. 1975; amd. Sec. 30, Ch. 368, L. 1975; amd. Sec. 1, Ch. 240, L. 1977; R.C.M. 1947, 87-145(2); amd. Sec. 1, Ch. 349, L. 1981; amd. Sec. 23, Ch. 234, L. 1987; amd. Sec. 28, Ch. 373, L. 1991.

39-51-3203. Obtaining benefits through deception or other fraudulent means — criminal penalty. A person who, through deception or other fraudulent means, obtains benefits which he is not entitled to under this chapter or under an employment security law of any other state or territory or the federal government or a person legally accountable for such conduct under 45-2-302 is guilty of a crime under 45-6-301, and a county attorney may initiate criminal proceedings against him.

History: En. Sec. 16, Ch. 137, L. 1937; amd. Sec. 1, Ch. 150, L. 1951; amd. Sec. 7, Ch. 164, L. 1955; amd. Sec. 10, Ch. 156, L. 1961; amd. Sec. 1, Ch. 38, L. 1969; amd. Sec. 1, Ch. 17, L. 1975; amd. Sec. 30, Ch. 368, L. 1975; amd. Sec. 1, Ch. 240, L. 1977; R.C.M. 1947, 87-145(3).

39-51-3204. Employing unit making false statement or representation, failing to disclose material fact, or failing or refusing to make contributions or other payments, furnish reports, or permit inspection or copying of records — criminal penalty. Any employing unit or any officer or agent of an employing unit or any other person who makes a false statement or representation knowing it to be false or who knowingly fails to disclose a material fact to prevent or reduce the payment of benefits to any individual entitled thereto or to avoid becoming or remaining subject hereto or to avoid or reduce any contribution or other payment required from an employing unit under this chapter or under the employment security law of any other state or territory or the federal government or who willfully fails or refuses to make any such contributions or other payment or to furnish any reports required hereunder or to produce or permit the inspection or copying of records as required hereunder shall be punished by a fine of not less than $50 or more than $500 or by imprisonment for not less than 3 days or more than 30 days in the county jail or by both such fine and imprisonment, and each such false statement or representation or failure to disclose a material fact and each day of such failure or refusal shall constitute a separate offense.

History: En. Sec. 16, Ch. 137, L. 1937; amd. Sec. 1, Ch. 150, L. 1951; amd. Sec. 7, Ch. 164, L. 1955; amd. Sec. 10, Ch. 156, L. 1961; amd. Sec. 1, Ch. 38, L. 1969; amd. Sec. 1, Ch. 17, L. 1975; amd. Sec. 30, Ch. 368, L. 1975; amd. Sec. 1, Ch. 240, L. 1977; R.C.M. 1947, 87-145(4).

39-51-3205. Criminal penalty for violations of chapter where no penalty prescribed. Any person who shall willfully violate any provision of this chapter or any order or rule thereunder, the violation of which is made unlawful or the observance of which is required under the terms of this chapter and for which a penalty is neither prescribed herein nor provided by any other applicable statute, shall be punished by a fine of not less than $50 or more than $500 or by imprisonment for not less than 3 days or more than 30 days in the county jail or by both such fine and imprisonment, and each day such violation continues shall be deemed to be a separate offense.

History: En. Sec. 16, Ch. 137, L. 1937; amd. Sec. 1, Ch. 150, L. 1951; amd. Sec. 7, Ch. 164, L. 1955; amd. Sec. 10, Ch. 156, L. 1961; amd. Sec. 1, Ch. 38, L. 1969; amd. Sec. 1, Ch. 17, L. 1975; amd. Sec. 30, Ch. 368, L. 1975; amd. Sec. 1, Ch. 240, L. 1977; R.C.M. 1947, 87-145(5).

Cross-References

Misdemeanor defined, 45-2-101.

39-51-3206. Collection of benefit overpayments. A person who receives benefits not authorized by this chapter shall repay to the department either directly or, as authorized by the department, by offset of future benefits to which the claimant may be entitled, or by a combination of both methods, a sum equal to the amount of the overpayment. A benefit offset may not exceed 50% of the weekly benefits to which a claimant is entitled unless the claimant gives written consent, except in cases of theft or fraud, when benefits may be offset by as much as 100% of the weekly benefits to which a claimant is entitled. The sum is collectible in the manner provided in this chapter for the collection of past-due contributions. The department may waive the benefit overpayment if the department finds that the claimant did not conceal or misrepresent material facts to obtain the overpaid benefits and that recovery of the benefit overpayment would cause a long-term financial hardship on the claimant. An action for collection of overpaid benefits must be brought within 5 years after the date of the overpayment. Notwithstanding any other provision of this chapter, the department may recover an overpayment of benefits paid to any individual under the laws of this state or another state or under an unemployment benefit program of the United States.

History: En. Sec. 16, Ch. 137, L. 1937; amd. Sec. 1, Ch. 150, L. 1951; amd. Sec. 7, Ch. 164, L. 1955; amd. Sec. 10, Ch. 156, L. 1961; amd. Sec. 1, Ch. 38, L. 1969; amd. Sec. 1, Ch. 17, L. 1975; amd. Sec. 30, Ch. 368, L. 1975; amd. Sec. 1, Ch. 240, L. 1977; R.C.M. 1947,

87-145(6); amd. Sec. 2, Ch. 57, L. 1979; amd. Sec. 50, Ch. 397, L. 1979; amd. Sec. 1, Ch. 349, L. 1981; amd. Sec. 24, Ch. 234, L. 1987; amd. Sec. 56, Ch. 83, L. 1989; amd. Sec. 7, Ch. 171, L. 1993; amd. Sec. 10, Ch. 61, L. 1999.

Compiler's Comments

1999 Amendment: Chapter 61 at end of second sentence inserted exception clause providing 100% offset of benefits in cases of theft and fraud; at end of third sentence after "contributions" deleted "unless the department finds that the benefits were received through no fault of the person and the recovery of the benefits would be against equity and good conscience"; inserted fourth sentence authorizing department to waive benefit overpayment upon finding that claimant did not conceal or misrepresent material facts to obtain overpaid benefits and that recovery would cause long-term financial hardship; and made minor changes in style. Amendment effective July 1, 1999.

39-51-3207. Authority to determine uncollectibility of debts — transfer of debts for collection — liability for payment of fees and costs of collection. (1) After making all reasonable efforts to collect unpaid contributions, assessments under 39-51-404(4), and penalties and interest, or overpaid benefits under 39-51-3206 and interest, the department may determine a debt to be uncollectible. Upon determining that a debt is uncollectible, the department may transfer the debt to the department of administration for collection as provided in 17-4-104.

(2) Subject to approval by the department, reasonable fees or costs of collection incurred by the department of administration may be added to the amount of the debt, including added fees or costs. The debtor is liable for repayment of the amount of the debt plus fees or costs added pursuant to this subsection. All money collected must be returned to the department to be applied to the debt, except that all fees or costs collected must be retained by the department of administration. If less than the full amount of the debt is collected, the state auditor shall retain only a proportionate share of the collection fees or costs.

History: En. Sec. 25, Ch. 234, L. 1987; amd. Sec. 8, Ch. 419, L. 1989; amd. Sec. 29, Ch. 325, L. 1995.

CHAPTERS 52 THROUGH 70

RESERVED

CHAPTER 71

WORKERS' COMPENSATION

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Chapter Cross-References

Administration of justice, Art. II, sec. 16, Mont. Const.

Part 1
General Provisions

39-71-101. Short title. This chapter may be cited as the "Workers' Compensation Act".

History: En. Sec. 1, Ch. 96, L. 1915; re-en. Sec. 2816, R.C.M. 1921; re-en. Sec. 2816, R.C.M. 1935; amd. Sec. 29, Ch. 341, L. 1969; amd. Sec. 86, Ch. 23, L. 1975; R.C.M. 1947, 92-101(part); amd. Sec. 51, Ch. 397, L. 1979.

39-71-102. Reference to plans. Whenever compensation plan No. 1, 2, or 3 is referred to, such reference also includes all other sections which are applicable to the subject matter of such reference.

History: En. Sec. 1, Ch. 96, L. 1915; re-en. Sec. 2817, R.C.M. 1921; re-en. Sec. 2817, R.C.M. 1935; R.C.M. 1947, 92-102; amd. Sec. 52, Ch. 397, L. 1979.

Cross-References

Compensation plan No. 1, Title 39, ch. 71, part 21.

Compensation plan No. 2, Title 39, ch. 71, part 22.

Compensation plan No. 3, Title 39, ch. 71, part 23.

39-71-103. Compensation provisions. The compensation provisions of this chapter, whenever referred to, shall be held to include the provisions of compensation plan No. 1, 2, or 3 and all other sections of this chapter applicable to the same or any part thereof.

History: En. Sec. 1, Ch. 96, L. 1915; re-en. Sec. 2818, R.C.M. 1921; re-en. Sec. 2818, R.C.M. 1935; R.C.M. 1947, 92-103.

39-71-104. Repealed. Sec. 68, Ch. 464, L. 1987.

History: En. Sec. 24, Ch. 96, L. 1915; re-en. Sec. 2964, R.C.M. 1921; re-en. Sec. 2964, R.C.M. 1935; R.C.M. 1947, 92-838.

39-71-105. Declaration of public policy. For the purposes of interpreting and applying Title 39, chapters 71 and 72, the following is the public policy of this state:

(1) It is an objective of the Montana workers' compensation system to provide, without regard to fault, wage supplement and medical benefits to a worker suffering from a work-related injury or disease. Wage-loss benefits are not intended to make an injured worker whole; they are intended to assist a worker at a reasonable cost to the employer. Within that limitation, the wage-loss benefit should bear a reasonable relationship to actual wages lost as a result of a work-related injury or disease.

(2) A worker's removal from the work force due to a work-related injury or disease has a negative impact on the worker, the worker's family, the employer, and the general public. Therefore, it is an objective of the workers' compensation system to return a worker to work as soon as possible after the worker has suffered a work-related injury or disease.

(3) Montana's workers' compensation and occupational disease insurance systems are intended to be primarily self-administering. Claimants should be able to speedily obtain benefits, and employers should be able to provide coverage at reasonably constant rates. To meet these objectives, the system must be designed to minimize reliance upon lawyers and the courts to obtain benefits and interpret liabilities.

(4) Title 39, chapters 71 and 72, must be construed according to their terms and not liberally in favor of any party.

(5) It is the intent of the legislature that stress claims, often referred to as "mental-mental claims" and "mental-physical claims", are not compensable under Montana's workers' compensation and occupational disease laws. The legislature recognizes that these claims are difficult to objectively verify and that the claims have a potential to place an economic burden on the workers' compensation and occupational disease system. The legislature also recognizes that there are other states that do not provide compensation for various categories of stress claims and that stress claims have presented economic problems for certain other jurisdictions. In addition, not all injuries are compensable under the present system, as is the case with repetitive injury claims, and it is within the legislature's authority to define the limits of the workers' compensation and occupational disease system.

History: En. Sec. 1, Ch. 464, L. 1987; amd. Sec. 1, Ch. 630, L. 1993.

39-71-106. No liability for reporting violation. A person, including but not limited to an insurer or an employer, may not be held liable for civil damages as a result of reporting in good faith information that the person believes proves a violation of the provisions of chapter 72 or this chapter.

History: En. Sec. 17, Ch. 619, L. 1993.

39-71-107. Insurers to act promptly on claims. (1) Pursuant to the public policy stated in 39-71-105, prompt claims handling practices are necessary to provide appropriate service to injured workers, to employers, and to providers who are the customers of the workers' compensation system.

(2) An insurer shall provide to the claimant:

(a) a written statement of the reasons that a claim is being denied at the time of denial;

(b) whenever benefits requested by a claimant are denied, a written explanation of how the claimant may appeal an insurer's decision; and

(c) a written explanation of the amount of wage loss benefits being paid to the claimant, along with an explanation of the calculation used to compute those benefits. The explanation must be sent within 7 days of the initial payment of the benefit.

(3) An insurer shall:

(a) begin making payments that are due on a claim within 14 days of acceptance of the claim, unless the insurer promptly notifies the claimant that the insurer needs additional information in order to begin paying benefits and specifies the information needed; and

(b) pay settlements within 30 days of the date the department issues an order approving the settlement.

(4) An insurer may not make payments pursuant to 39-71-608 or any other reservation of rights for more than 90 days without:

(a) written consent of the claimant; or

(b) approval of the department.

(5) The department may adopt rules to implement this section.

History: En. Sec. 4, Ch. 243, L. 1995.

39-71-108 through 39-71-115 reserved.

39-71-116. *(Temporary)* **Definitions.** Unless the context otherwise requires, words and phrases used in this chapter have the following meanings:

(1) "Actual wage loss" means that the wages that a worker earns or is qualified to earn after the worker reaches maximum healing are less than the actual wages the worker received at the time of the injury.

(2) "Administer and pay" includes all actions by the state fund under the Workers' Compensation Act and the Occupational Disease Act of Montana necessary to:

(a) investigation, review, and settlement of claims;

(b) payment of benefits;

(c) setting of reserves;

(d) furnishing of services and facilities; and

(e) use of actuarial, audit, accounting, vocational rehabilitation, and legal services.

(3) "Aid or sustenance" means a public or private subsidy made to provide a means of support, maintenance, or subsistence for the recipient.

(4) "Average weekly wage" means the mean weekly earnings of all employees under covered employment, as defined and established annually by

the department. It is established at the nearest whole dollar number and must be adopted by the department before July 1 of each year.

(5) "Beneficiary" means:

(a) a surviving spouse living with or legally entitled to be supported by the deceased at the time of injury;

(b) an unmarried child under 18 years of age;

(c) an unmarried child under 22 years of age who is a full-time student in an accredited school or is enrolled in an accredited apprenticeship program;

(d) an invalid child over 18 years of age who is dependent, as defined in 26 U.S.C. 152, upon the decedent for support at the time of injury;

(e) a parent who is dependent, as defined in 26 U.S.C. 152, upon the decedent for support at the time of the injury if a beneficiary, as defined in subsections (5)(a) through (5)(d), does not exist; and

(f) a brother or sister under 18 years of age if dependent, as defined in 26 U.S.C. 152, upon the decedent for support at the time of the injury but only until the age of 18 years and only when a beneficiary, as defined in subsections (5)(a) through (5)(e), does not exist.

(6) "Business partner" means the community, governmental entity, or business organization that provides the premises for work-based learning activities for students.

(7) "Casual employment" means employment not in the usual course of the trade, business, profession, or occupation of the employer.

(8) "Child" includes a posthumous child, a dependent stepchild, and a child legally adopted prior to the injury.

(9) "Construction industry" means the major group of general contractors and operative builders, heavy construction (other than building construction) contractors, and special trade contractors, listed in major groups 15 through 17 in the 1987 Standard Industrial Classification Manual. The term does not include office workers, design professionals, salespersons, estimators, or any other related employment that is not directly involved on a regular basis in the provision of physical labor at a construction or renovation site.

(10) "Days" means calendar days, unless otherwise specified.

(11) "Department" means the department of labor and industry.

(12) "Fiscal year" means the period of time between July 1 and the succeeding June 30.

(13) "Household or domestic employment" means employment of persons other than members of the household for the purpose of tending to the aid and comfort of the employer or members of the employer's family, including but not limited to housecleaning and yard work, but does not include employment beyond the scope of normal household or domestic duties, such as home health care or domiciliary care.

(14) "Insurer" means an employer bound by compensation plan No. 1, an insurance company transacting business under compensation plan No. 2, or the state fund under compensation plan No. 3.

(15) "Invalid" means one who is physically or mentally incapacitated.

(16) "Limited liability company" is as defined in 35-8-102.

(17) "Maintenance care" means treatment designed to provide the optimum state of health while minimizing recurrence of the clinical status.

(18) "Medical stability", "maximum healing", or "maximum medical healing" means a point in the healing process when further material improvement would not be reasonably expected from primary medical treatment.

(19) "Objective medical findings" means medical evidence, including range of motion, atrophy, muscle strength, muscle spasm, or other diagnostic evidence, substantiated by clinical findings.

(20) "Order" means any decision, rule, direction, requirement, or standard of the department or any other determination arrived at or decision made by the department.

(21) "Palliative care" means treatment designed to reduce or ease symptoms without curing the underlying cause of the symptoms.

(22) "Payroll", "annual payroll", or "annual payroll for the preceding year" means the average annual payroll of the employer for the preceding calendar year or, if the employer has not operated a sufficient or any length of time during the calendar year, 12 times the average monthly payroll for the current year. However, an estimate may be made by the department for any employer starting in business if average payrolls are not available. This estimate must be adjusted by additional payment by the employer or refund by the department, as the case may actually be, on December 31 of the current year. An employer's payroll must be computed by calculating all wages, as defined in 39-71-123, that are paid by an employer.

(23) "Permanent partial disability" means a physical condition in which a worker, after reaching maximum medical healing:

(a) has a permanent impairment established by objective medical findings;

(b) is able to return to work in some capacity but the permanent impairment impairs the worker's ability to work; and

(c) has an actual wage loss as a result of the injury.

(24) "Permanent total disability" means a physical condition resulting from injury as defined in this chapter, after a worker reaches maximum medical healing, in which a worker does not have a reasonable prospect of physically performing regular employment. Regular employment means work on a recurring basis performed for remuneration in a trade, business, profession, or other occupation in this state. Lack of immediate job openings is not a factor to be considered in determining if a worker is permanently totally disabled.

(25) The "plant of the employer" includes the place of business of a third person while the employer has access to or control over the place of business for the purpose of carrying on the employer's usual trade, business, or occupation.

(26) "Primary medical services" means treatment prescribed by a treating physician, for conditions resulting from the injury, necessary for achieving medical stability.

(27) "Public corporation" means the state or any county, municipal corporation, school district, city, city under a commission form of government or special charter, town, or village.

(28) "Reasonably safe place to work" means that the place of employment has been made as free from danger to the life or safety of the employee as the nature of the employment will reasonably permit.

(29) "Reasonably safe tools and appliances" are tools and appliances that are adapted to and that are reasonably safe for use for the particular purpose for which they are furnished.

(30) (a) "Secondary medical services" means those medical services or appliances that are considered not medically necessary for medical stability. The services and appliances include but are not limited to spas or hot tubs, work hardening, physical restoration programs and other restoration programs designed to address disability and not impairment, or equipment offered by individuals, clinics, groups, hospitals, or rehabilitation facilities.

(b) (i) As used in this subsection (30), "disability" means a condition in which a worker's ability to engage in gainful employment is diminished as a result of physical restrictions resulting from an injury. The restrictions may be combined with factors, such as the worker's age, education, work history, and other factors that affect the worker's ability to engage in gainful employment.

(ii) Disability does not mean a purely medical condition.

(31) "Sole proprietor" means the person who has the exclusive legal right or title to or ownership of a business enterprise.

(32) "Temporary partial disability" means a physical condition resulting from an injury, as defined in 39-71-119, in which a worker, prior to maximum healing:

(a) is temporarily unable to return to the position held at the time of injury because of a medically determined physical restriction;

(b) returns to work in a modified or alternative employment; and

(c) suffers a partial wage loss.

(33) "Temporary service contractor" means a person, firm, association, partnership, limited liability company, or corporation conducting business that hires its own employees and assigns them to clients to fill a work assignment with a finite ending date to support or supplement the client's workforce in situations resulting from employee absences, skill shortages, seasonal workloads, and special assignments and projects.

(34) "Temporary total disability" means a physical condition resulting from an injury, as defined in this chapter, that results in total loss of wages and exists until the injured worker reaches maximum medical healing.

(35) "Temporary worker" means a worker whose services are furnished to another on a part-time or temporary basis to fill a work assignment with a finite ending date to support or supplement a workforce in situations resulting from employee absences, skill shortages, seasonal workloads, and special assignments and projects.

(36) "Treating physician" means a person who is primarily responsible for the treatment of a worker's compensable injury and is:

(a) a physician licensed by the state of Montana under Title 37, chapter 3, and has admitting privileges to practice in one or more hospitals, if any, in the area where the physician is located;

(b) a chiropractor licensed by the state of Montana under Title 37, chapter 12;

(c) a physician assistant-certified licensed by the state of Montana under Title 37, chapter 20, if there is not a physician, as defined in subsection (36)(a), in the area where the physician assistant-certified is located;

(d) an osteopath licensed by the state of Montana under Title 37, chapter 5;

(e) a dentist licensed by the state of Montana under Title 37, chapter 4;

(f) for a claimant residing out of state or upon approval of the insurer, a treating physician defined in subsections (36)(a) through (36)(e) who is licensed or certified in another state; or

(g) an advanced practice registered nurse licensed by the state of Montana under Title 37, chapter 8, recognized by the board of nursing as a nurse practitioner or a clinical nurse specialist, and practicing in consultation with a physician licensed under Title 37, chapter 3, if there is not a treating physician, as defined in subsection (35)(a), in the area in which the advanced practice registered nurse is located.

(37) "Work-based learning activities" means job training and work experience conducted on the premises of a business partner as a component of school-based learning activities authorized by an elementary, secondary, or postsecondary educational institution.

(38) "Year", unless otherwise specified, means calendar year.

39-71-116. *(Effective July 1, 2001)* **Definitions.** Unless the context otherwise requires, in this chapter, the following definitions apply:

(1) "Actual wage loss" means that the wages that a worker earns or is qualified to earn after the worker reaches maximum healing are less than the actual wages the worker received at the time of the injury.

(2) "Administer and pay" includes all actions by the state fund under the Workers' Compensation Act and the Occupational Disease Act of Montana necessary to:

(a) investigation, review, and settlement of claims;

(b) payment of benefits;

(c) setting of reserves;

(d) furnishing of services and facilities; and

(e) use of actuarial, audit, accounting, vocational rehabilitation, and legal services.

(3) "Aid or sustenance" means a public or private subsidy made to provide a means of support, maintenance, or subsistence for the recipient.

(4) "Average weekly wage" means the mean weekly earnings of all employees under covered employment, as defined and established annually by the department. It is established at the nearest whole dollar number and must be adopted by the department before July 1 of each year.

(5) "Beneficiary" means:

(a) a surviving spouse living with or legally entitled to be supported by the deceased at the time of injury;

(b) an unmarried child under 18 years of age;

(c) an unmarried child under 22 years of age who is a full-time student in an accredited school or is enrolled in an accredited apprenticeship program;

(d) an invalid child over 18 years of age who is dependent, as defined in 26 U.S.C. 152, upon the decedent for support at the time of injury;

(e) a parent who is dependent, as defined in 26 U.S.C. 152, upon the decedent for support at the time of the injury if a beneficiary, as defined in subsections (5)(a) through (5)(d), does not exist; and

(f) a brother or sister under 18 years of age if dependent, as defined in 26 U.S.C. 152, upon the decedent for support at the time of the injury but only until the age of 18 years and only when a beneficiary, as defined in subsections (5)(a) through (5)(e), does not exist.

(6) "Business partner" means the community, governmental entity, or business organization that provides the premises for work-based learning activities for students.

(7) "Casual employment" means employment not in the usual course of the trade, business, profession, or occupation of the employer.

(8) "Child" includes a posthumous child, a dependent stepchild, and a child legally adopted prior to the injury.

(9) "Construction industry" means the major group of general contractors and operative builders, heavy construction (other than building construction) contractors, and special trade contractors, listed in major group 23 in the North American Industry Classification System Manual. The term does not include office workers, design professionals, salespersons, estimators, or any other related employment that is not directly involved on a regular basis in the provision of physical labor at a construction or renovation site.

(10) "Days" means calendar days, unless otherwise specified.

(11) "Department" means the department of labor and industry.

(12) "Fiscal year" means the period of time between July 1 and the succeeding June 30.

(13) "Household or domestic employment" means employment of persons other than members of the household for the purpose of tending to the aid and comfort of the employer or members of the employer's family, including but not limited to housecleaning and yard work, but does not include employment beyond the scope of normal household or domestic duties, such as home health care or domiciliary care.

(14) "Insurer" means an employer bound by compensation plan No. 1, an insurance company transacting business under compensation plan No. 2, or the state fund under compensation plan No. 3.

(15) "Invalid" means one who is physically or mentally incapacitated.

(16) "Limited liability company" is as defined in 35-8-102.

(17) "Maintenance care" means treatment designed to provide the optimum state of health while minimizing recurrence of the clinical status.

(18) "Medical stability", "maximum healing", or "maximum medical healing" means a point in the healing process when further material improvement would not be reasonably expected from primary medical treatment.

(19) "Objective medical findings" means medical evidence, including range of motion, atrophy, muscle strength, muscle spasm, or other diagnostic evidence, substantiated by clinical findings.

(20) "Order" means any decision, rule, direction, requirement, or standard of the department or any other determination arrived at or decision made by the department.

(21) "Palliative care" means treatment designed to reduce or ease symptoms without curing the underlying cause of the symptoms.

(22) "Payroll", "annual payroll", or "annual payroll for the preceding year" means the average annual payroll of the employer for the preceding calendar

year or, if the employer has not operated a sufficient or any length of time during the calendar year, 12 times the average monthly payroll for the current year. However, an estimate may be made by the department for any employer starting in business if average payrolls are not available. This estimate must be adjusted by additional payment by the employer or refund by the department, as the case may actually be, on December 31 of the current year. An employer's payroll must be computed by calculating all wages, as defined in 39-71-123, that are paid by an employer.

(23) "Permanent partial disability" means a physical condition in which a worker, after reaching maximum medical healing:

(a) has a permanent impairment established by objective medical findings;

(b) is able to return to work in some capacity but the permanent impairment impairs the worker's ability to work; and

(c) has an actual wage loss as a result of the injury.

(24) "Permanent total disability" means a physical condition resulting from injury as defined in this chapter, after a worker reaches maximum medical healing, in which a worker does not have a reasonable prospect of physically performing regular employment. Regular employment means work on a recurring basis performed for remuneration in a trade, business, profession, or other occupation in this state. Lack of immediate job openings is not a factor to be considered in determining if a worker is permanently totally disabled.

(25) The "plant of the employer" includes the place of business of a third person while the employer has access to or control over the place of business for the purpose of carrying on the employer's usual trade, business, or occupation.

(26) "Primary medical services" means treatment prescribed by a treating physician, for conditions resulting from the injury, necessary for achieving medical stability.

(27) "Public corporation" means the state or a county, municipal corporation, school district, city, city under a commission form of government or special charter, town, or village.

(28) "Reasonably safe place to work" means that the place of employment has been made as free from danger to the life or safety of the employee as the nature of the employment will reasonably permit.

(29) "Reasonably safe tools and appliances" are tools and appliances that are adapted to and that are reasonably safe for use for the particular purpose for which they are furnished.

(30) (a) "Secondary medical services" means those medical services or appliances that are considered not medically necessary for medical stability. The services and appliances include but are not limited to spas or hot tubs, work hardening, physical restoration programs and other restoration programs designed to address disability and not impairment, or equipment offered by individuals, clinics, groups, hospitals, or rehabilitation facilities.

(b) (i) As used in this subsection (30), "disability" means a condition in which a worker's ability to engage in gainful employment is diminished as a result of physical restrictions resulting from an injury. The restrictions may be combined with factors, such as the worker's age, education, work history, and other factors that affect the worker's ability to engage in gainful employment.

(ii) Disability does not mean a purely medical condition.

(31) "Sole proprietor" means the person who has the exclusive legal right or title to or ownership of a business enterprise.

(32) "Temporary partial disability" means a physical condition resulting from an injury, as defined in 39-71-119, in which a worker, prior to maximum healing:

(a) is temporarily unable to return to the position held at the time of injury because of a medically determined physical restriction;

(b) returns to work in a modified or alternative employment; and

(c) suffers a partial wage loss.

(33) "Temporary service contractor" means a person, firm, association, partnership, limited liability company, or corporation conducting business that hires its own employees and assigns them to clients to fill a work assignment with a finite ending date to support or supplement the client's workforce in situations resulting from employee absences, skill shortages, seasonal workloads, and special assignments and projects.

(34) "Temporary total disability" means a physical condition resulting from an injury, as defined in this chapter, that results in total loss of wages and exists until the injured worker reaches maximum medical healing.

(35) "Temporary worker" means a worker whose services are furnished to another on a part-time or temporary basis to fill a work assignment with a finite ending date to support or supplement a workforce in situations resulting from employee absences, skill shortages, seasonal workloads, and special assignments and projects.

(36) "Treating physician" means a person who is primarily responsible for the treatment of a worker's compensable injury and is:

(a) a physician licensed by the state of Montana under Title 37, chapter 3, and has admitting privileges to practice in one or more hospitals, if any, in the area where the physician is located;

(b) a chiropractor licensed by the state of Montana under Title 37, chapter 12;

(c) a physician assistant-certified licensed by the state of Montana under Title 37, chapter 20, if there is not a treating physician, as provided for in subsection (36)(a), in the area where the physician assistant-certified is located;

(d) an osteopath licensed by the state of Montana under Title 37, chapter 5;

(e) a dentist licensed by the state of Montana under Title 37, chapter 4;

(f) for a claimant residing out of state or upon approval of the insurer, a treating physician defined in subsections (36)(a) through (36)(e) who is licensed or certified in another state; or

(g) an advanced practice registered nurse licensed by the state of Montana under Title 37, chapter 8, recognized by the board of nursing as a nurse practitioner or a clinical nurse specialist, and practicing in consultation with a physician licensed under Title 37, chapter 3, if there is not a treating physician, as provided for in subsection (36)(a), in the area in which the advanced practice registered nurse is located.

(37) "Work-based learning activities" means job training and work experience conducted on the premises of a business partner as a component of school-based learning activities authorized by an elementary, secondary, or postsecondary educational institution.

(38) "Year", unless otherwise specified, means calendar year.

History: Ap. p. Sec. 6, Ch. 96, L. 1915; re-en. Sec. 2853, R.C.M. 1921; re-en. Sec. 2853, R.C.M. 1935; Sec. 92-401, R.C.M. 1947; (1)En. 92-423.2 by Sec. 1, Ch. 445, L. 1973; Sec. 92-423.2, R.C.M. 1947; (2)En. Sec. 6, Ch. 96, L. 1915; re-en. Sec. 2865, R.C.M. 1921; amd. Sec. 4, Ch. 121, L. 1925; re-en. Sec. 2865, R.C.M. 1935; amd. Sec. 1, Ch. 92, L. 1969; amd. Sec. 1, Ch. 331, L. 1973; amd. Sec. 1, Ch. 269, L. 1974; amd. Sec. 1, Ch. 46, L. 1975; Sec. 92-413, R.C.M. 1947; (3)Ap. p. Sec. 6, Ch. 96, L. 1915; re-en. Sec. 2888, R.C.M. 1921; re-en. Sec. 2888, R.C.M. 1935; Sec. 92-436, R.C.M. 1947; Ap. p. Sec. 12, Ch. 235, L. 1947; Sec. 92-1121.1, R.C.M. 1947; (4)En. Sec. 6, Ch. 96, L. 1915; re-en. Sec. 2869, R.C.M. 1921; re-en. Sec. 2869, R.C.M. 1935; amd. Sec. 2, Ch. 92, L. 1969; Sec. 92-417, R.C.M. 1947; (5)En. Sec. 6, Ch. 96, L. 1915; re-en. Sec. 2878, R.C.M. 1921; re-en. Sec. 2878, R.C.M. 1935; amd. Sec. 7, Ch. 23, L. 1975; Sec. 92-426, R.C.M. 1947; (6), (22)En. Sec. 6, Ch. 96, L. 1915; re-en. Sec. 2885, R.C.M. 1921; re-en. Sec. 2885, R.C.M. 1935; Sec. 92-433, R.C.M. 1947; (7)En. Sec. 6, Ch. 96, L. 1915; re-en. Sec. 2877, R.C.M. 1921; re-en. Sec. 2877, R.C.M. 1935; amd. Sec. 1, Ch. 33, L. 1974; Sec. 92-425, R.C.M. 1947; (8)En. Sec. 6, Ch. 96, L. 1915; re-en. Sec. 2887, R.C.M. 1921; re-en. Sec. 2887, R.C.M. 1935; amd. Sec. 7, Ch. 550, L. 1977; Sec. 92-435, R.C.M. 1947; (9)En. Sec. 6, Ch. 96, L. 1915; re-en. Sec. 2868, R.C.M. 1921; re-en. Sec. 2868, R.C.M. 1935; Sec. 92-416, R.C.M. 1947; (10)En. Sec. 6, Ch. 96, L. 1915; re-en. Sec. 2881, R.C.M. 1921; re-en. Sec. 2881, R.C.M. 1935; amd. Sec. 8, Ch. 23, L. 1975; Sec. 92-429, R.C.M. 1947; (11)En. Sec. 6, Ch. 96, L. 1915; re-en. Sec. 2884, R.C.M. 1921; re-en. Sec. 2884, R.C.M. 1935; amd. Sec. 9, Ch. 23, L. 1975; Sec. 92-432, R.C.M. 1947; (12)En. 92-440 by Sec. 1, Ch. 108, L. 1973; Sec. 92-440, R.C.M. 1947; (13)En. 92-441 by Sec. 1, Ch. 109, L. 1973; Sec. 92-441, R.C.M. 1947; (14)En. Sec. 6, Ch. 96, L. 1915; re-en. Sec. 2873, R.C.M. 1921; re-en. Sec. 2873, R.C.M. 1935; Sec. 92-421, R.C.M. 1947; (15)En. Sec. 6, Ch. 96, L. 1915; re-en. Sec. 2889, R.C.M. 1921; re-en. Sec. 2889, R.C.M. 1935; Sec. 92-437, R.C.M. 1947; (16)En. Sec. 6, Ch. 96, L. 1915; re-en. Sec. 2886, R.C.M. 1921; re-en. Sec. 2886, R.C.M,. 1935; Sec. 92-434, R.C.M. 1947; (17)En. Sec. 6, Ch. 96, L. 1915; re-en. Sec. 2860, R.C.M. 1921; re-en. Sec. 2860, R.C.M. 1935; Sec. 92-408, R.C.M. 1947; (18)En. Sec. 6, Ch. 96, L. 1915; re-en. Sec. 2861, R.C.M. 1921; re-en. Sec. 2861, R.C.M. 1935; Sec. 92-409, R.C.M. 1947; (19)En. 92-439 by Sec. 1, Ch. 107, L. 1973; Sec. 92-439, R.C.M. 1947; (20)En. 92-423.1 by Sec. 1, Ch. 444, L. 1973; Sec. 92-423.1, R.C.M. 1947; (21)En. Sec. 6, Ch. 96, L. 1915; re-en. Sec. 2876, R.C.M. 1921; re-en. Sec. 2876, R.C.M. 1935; Sec. 92-424, R.C.M. 1947; R.C.M. 1947, 92-401, 92-408, 92-409, 92-413, 92-416, 92-417, 92-421, 92-423.1, 92-423.2, 92-424, 92-425, 92-426, 92-429, 92-432, 92-433, 92-434, 92-435, 92-436, 92-437, 92-439, 92-440, 92-441, 92-1121.1(part); amd. Sec. 53, Ch. 397, L. 1979; amd. Sec. 1, Ch. 47, L. 1981; amd. Sec. 1, Ch. 349, L. 1981; amd. Sec. 1, Ch. 374, L. 1985; amd. Sec. 2, Ch. 464, L. 1987; amd. Sec. 7, Ch. 333, L. 1989; amd. Sec. 13, Ch. 613, L. 1989; amd. Sec. 6, Ch. 4, Sp. L. May 1990; amd. Sec. 1, Ch. 323, L. 1991; amd. Sec. 2, Ch. 480, L. 1991; amd. Sec. 1, Ch. 574, L. 1991; amd. Sec. 1, Ch. 555, L. 1993; amd. Sec. 1, Ch. 619, L. 1993; amd. Sec. 2, Ch. 628, L. 1993; amd. Sec. 1, Ch. 234, L. 1995; amd. Sec. 5, Ch. 243, L. 1995; amd. Sec. 1, Ch. 516, L. 1995; amd. Sec. 6, Ch. 276, L. 1997; amd. Sec. 1, Ch. 404, L. 1997; amd. Sec. 1, Ch. 500, L. 1997; amd. Sec. 72, Ch. 51, L. 1999.

Compiler's Comments

1999 Amendment: Chapter 51 in definition of construction industry at end of first sentence substituted "group 23 in the North American Industry Classification System Manual" for "groups 15 through 17 in the Standard Industrial Classification Manual"; in definition of treating physician in (c) near middle before "physician" inserted "treating", and in (g) near end substituted "(36)(a)" for "(35)(a)"; and made minor changes in style. Amendment effective July 1, 2001.

Cross-References

Rehabilitation benefits, 39-71-1006.

Managed care and preferred provider organizations, Title 39, ch. 71, part 11.

39-71-117. Employer defined. (1) "Employer" means:

(a) the state and each county, city and county, city school district, and irrigation district; all other districts established by law; all public corporations and quasi-public corporations and public agencies; each person; each prime contractor; each firm, voluntary association, limited liability company, limited liability partnership, and private corporation, including any public service corporation and including an independent contractor who has a person in service under an appointment or contract of hire, expressed or implied, oral or written; and the legal representative of any deceased employer or the receiver or trustee of the deceased employer;

(b) any association, corporation, limited liability company, limited liability partnership, or organization that seeks permission and meets the requirements set by the department by rule for a group of individual employers to operate as self-insured under plan No. 1 of this chapter; and

(c) any nonprofit association, limited liability company, limited liability partnership, or corporation or other entity funded in whole or in part by federal, state, or local government funds that places community service participants, as described in 39-71-118(1)(e), with nonprofit organizations or associations or federal, state, or local government entities.

(2) A temporary service contractor is the employer of a temporary worker for premium and loss experience purposes.

(3) Except as provided in chapter 8 of this title, an employer defined in subsection (1) who uses the services of a worker furnished by another person, association, contractor, firm, limited liability company, limited liability partnership, or corporation, other than a temporary service contractor, is presumed to be the employer for workers' compensation premium and loss experience purposes for work performed by the worker. The presumption may be rebutted by substantial credible evidence of the following:

(a) the person, association, contractor, firm, limited liability company, limited liability partnership, or corporation, other than a temporary service contractor, furnishing the services of a worker to another retains control over all aspects of the work performed by the worker, both at the inception of employment and during all phases of the work; and

(b) the person, association, contractor, firm, limited liability company, limited liability partnership, or corporation, other than a temporary service contractor, furnishing the services of a worker to another has obtained workers' compensation insurance for the worker in Montana both at the inception of employment and during all phases of the work performed.

(4) An interstate or intrastate common or contract motor carrier doing business in this state who uses drivers in this state is considered the employer, is liable for workers' compensation premiums, and is subject to loss experience rating in this state unless:

(a) the driver in this state is certified as an independent contractor as provided in 39-71-401(3); or

(b) the person, association, contractor, firm, limited liability company, limited liability partnership, or corporation furnishing drivers in this state to a motor carrier has obtained workers' compensation insurance on the drivers in Montana both at the inception of employment and during all phases of the work performed.

History: En. 92-410.1 by Sec. 1, Ch. 154, L. 1973; R.C.M. 1947, 92-410.1(part); amd. Sec. 1, Ch. 480, L. 1985; amd. Sec. 64, Ch. 613, L. 1989; amd. Sec. 2, Ch. 323, L. 1991; amd. Sec. 1, Ch. 813, L. 1991; amd. Sec. 1, Ch. 458, L. 1993; amd. Sec. 29, Ch. 308, L. 1995; amd. Sec. 18, Ch. 344, L. 1995; amd. Sec. 2, Ch. 516, L. 1995; amd. Sec. 1, Ch. 172, L. 1997.

39-71-118. Employee, worker, volunteer, and volunteer firefighter defined. (1) The term "employee" or "worker" means:

(a) each person in this state, including a contractor other than an independent contractor, who is in the service of an employer, as defined by

39-71-117, under any appointment or contract of hire, expressed or implied, oral or written. The terms include aliens and minors, whether lawfully or unlawfully employed, and all of the elected and appointed paid public officers and officers and members of boards of directors of quasi-public or private corporations, except those officers identified in 39-71-401(2), while rendering actual service for the corporations for pay. Casual employees, as defined by 39-71-116, are included as employees if they are not otherwise covered by workers' compensation and if an employer has elected to be bound by the provisions of the compensation law for these casual employments, as provided in 39-71-401(2). Household or domestic employment is excluded.

(b) any juvenile who is performing work under authorization of a district court judge in a delinquency prevention or rehabilitation program;

(c) a person who is receiving on-the-job vocational rehabilitation training or other on-the-job training under a state or federal vocational training program, whether or not under an appointment or contract of hire with an employer, as defined in this chapter, and, except as provided in subsection (9), whether or not receiving payment from a third party. However, this subsection does not apply to students enrolled in vocational training programs, as outlined in this subsection, while they are on the premises of a public school or community college.

(d) an aircrew member or other person who is employed as a volunteer under 67-2-105;

(e) a person, other than a juvenile as defined in subsection (1)(b), who is performing community service for a nonprofit organization or association or for a federal, state, or local government entity under a court order, or an order from a hearings officer as a result of a probation or parole violation, whether or not under appointment or contract of hire with an employer, as defined in this chapter, and whether or not receiving payment from a third party. For a person covered by the definition in this subsection (1)(e):

(i) compensation benefits must be limited to medical expenses pursuant to 39-71-704 and an impairment award pursuant to 39-71-703 that is based upon the minimum wage established under Title 39, chapter 3, part 4, for a full-time employee at the time of the injury; and

(ii) premiums must be paid by the employer, as defined in 39-71-117(3), and must be based upon the minimum wage established under Title 39, chapter 3, part 4, for the number of hours of community service required under the order from the court or hearings officer.

(f) an inmate working in a federally certified prison industries program authorized under 53-1-301;

(g) a person who is an enrolled member of a volunteer fire department, as described in 7-33-4109, or a person who provides ambulance services under Title 7, chapter 34, part 1; and

(h) a person placed at a public or private entity's worksite pursuant to 53-4-704 is considered an employee for workers' compensation purposes only. The department of public health and human services shall provide workers' compensation coverage for participants in the FAIM project who are placed at public or private worksites through an endorsement to the department of public health and human services' workers' compensation policy naming the public or private worksite entities as named insureds under the policy. The endorsement may cover only the entity's FAIM participants and may only be for the duration of each participant's training in the FAIM project under a written agreement between the department of public health and human services and each public or private entity. The department of public health and human services may not provide workers' compensation coverage for individuals who are covered for workers' compensation purposes by another state or federal employment training program. Premiums and benefits must be based upon the wage that a probationary employee is paid for work of a similar nature at the assigned worksite.

(2) The terms defined in subsection (1) do not include a person who is:

(a) participating in recreational activity and who at the time is relieved of and is not performing prescribed duties, regardless of whether the person is using, by discount or otherwise, a pass, ticket, permit, device, or other emolument of employment;

(b) performing voluntary service at a recreational facility and who receives no compensation for those services other than meals, lodging, or the use of the recreational facilities;

(c) performing services as a volunteer, except for a person who is otherwise entitled to coverage under the laws of this state. As used in this subsection (2)(c), "volunteer" means a person who performs services on behalf of an employer, as defined in 39-71-117, but who does not receive wages as defined in 39-71-123.

(d) serving as a foster parent, licensed as a foster care provider in accordance with 41-3-1141, and providing care without wage compensation to no more than six foster children in the provider's own residence. The person may receive reimbursement for providing room and board, obtaining training, respite care, leisure and recreational activities, and providing for other needs and activities arising in the provision of in-home foster care.

(3) With the approval of the insurer, an employer may elect to include as an employee under the provisions of this chapter any volunteer as defined in subsection (2)(c).

(4) (a) The term "volunteer firefighter" means a firefighter who is an enrolled and active member of a fire company organized and funded by a county, a rural fire district, or a fire service area.

(b) The term "volunteer hours" means all the time spent by a volunteer firefighter in the service of an employer, including but not limited to training time, response time, and time spent at the employer's premises.

(5) (a) If the employer is a partnership, limited liability partnership, sole proprietor, or a member-managed limited liability company, the employer may elect to include as an employee within the provisions of this chapter any member of the partnership or limited liability partnership, the owner of the sole proprietorship, or any member of the limited liability company devoting full time to the partnership, limited liability partnership, proprietorship, or limited liability company business.

(b) In the event of an election, the employer shall serve upon the employer's insurer written notice naming the partners, sole proprietor, or members to be covered and stating the level of compensation coverage desired by electing the amount of wages to be reported, subject to the limitations in subsection (5)(d). A partner, sole proprietor, or member is not considered an employee within this chapter until notice has been given.

(c) A change in elected wages must be in writing and is effective at the start of the next quarter following notification.

(d) All weekly compensation benefits must be based on the amount of elected wages, subject to the minimum and maximum limitations of this subsection. For premium ratemaking and for the determination of weekly wage for weekly compensation benefits, the electing employer may elect not less than $900 a month and not more than 1 ½ times the average weekly wage, as defined in this chapter.

(6) (a) If the employer is a quasi-public or a private corporation or a manager-managed limited liability company, the employer may elect to include as an employee within the provisions of this chapter any corporate officer or manager exempted under 39-71-401(2).

(b) In the event of an election, the employer shall serve upon the employer's insurer written notice naming the corporate officer or manager to be covered and stating the level of compensation coverage desired by electing the amount of wages to be reported, subject to the limitations in subsection (5)(d). A corporate officer or manager is not considered an employee within this chapter until notice has been given.

(c) A change in elected wages must be in writing and is effective at the start of the next quarter following notification.

(d) All weekly compensation benefits must be based on the amount of elected wages, subject to the minimum and maximum limitations of this subsection. For premium ratemaking and for the determination of the weekly wage for weekly compensation benefits, the electing employer may elect not less than $200 a week and not more than 1 ½ times the average weekly wage, as defined in this chapter.

(7) (a) The trustees of a rural fire district, a county governing body providing rural fire protection, or the county commissioners or trustees for a fire service area may elect to include as an employee within the provisions of this chapter any volunteer firefighter. A volunteer firefighter who receives workers' compensation coverage under this section may not receive disability benefits under Title 19, chapter 17.

(b) In the event of an election, the employer shall report payroll for all volunteer firefighters for premium and weekly benefit purposes based on the number of volunteer hours of each firefighter times the average weekly wage divided by 40 hours, subject to a maximum of 1 ½ times the average weekly wage.

(8) Except as provided in chapter 8 of this title, an employee or worker in this state whose services are furnished by a person, association, contractor, firm, limited liability company, limited liability partnership, or corporation, other than a temporary service contractor, to an employer, as defined in 39-71-117, is presumed to be under the control and employment of the employer. This presumption may be rebutted as provided in 39-71-117(3).

(9) A student currently enrolled in an elementary, secondary, or postsecondary educational institution who is participating in work-based learning activities and who is paid wages by the educational institution or

business partner is the employee of the entity that pays the student's wages for all purposes under this chapter. A student who is not paid wages by the business partner or the educational institution is a volunteer and is subject to the provisions of this chapter.

(10) For purposes of this section, an "employee or worker in this state" means:

(a) a resident of Montana who is employed by an employer and whose employment duties are primarily carried out or controlled within this state;

(b) a nonresident of Montana whose principal employment duties are conducted within this state on a regular basis for an employer;

(c) a nonresident employee of an employer from another state engaged in the construction industry, as defined in 39-71-116, within this state; or

(d) a nonresident of Montana who does not meet the requirements of subsection (10)(b) and whose employer elects coverage with an insurer that allows an election for an employer whose:

(i) nonresident employees are hired in Montana;

(ii) nonresident employees' wages are paid in Montana;

(iii) nonresident employees are supervised in Montana; and

(iv) business records are maintained in Montana.

(11) An insurer may require coverage for all nonresident employees of a Montana employer who do not meet the requirements of subsection (10)(b) or (10)(d) as a condition of approving the election under subsection (10)(d).

History: En. Sec. 6, Ch. 96, L. 1915; re-en. Sec. 2863, R.C.M. 1921; amd. Sec. 3, Ch. 121, L. 1925; amd. Sec. 1, Ch. 139, L. 1931; re-en. Sec. 2863, R.C.M. 1935; amd. Sec. 3, Ch. 88, L. 1945; amd. Sec. 1, Ch. 153, L. 1963; amd. Sec. 1, Ch. 308, L. 1971; amd. Sec. 1, Ch. 44, L. 1975; amd. Sec. 1, Ch. 281, L. 1977; R.C.M. 1947, 92-411; amd. Sec. 1, Ch. 21, L. 1981; amd. Sec. 2, Ch. 336, L. 1985; amd. Sec. 20, Ch. 670, L. 1985; amd. Sec. 96, Ch. 370, L. 1987; amd. Sec. 67, Ch. 464, L. 1987; amd. Sec. 25, Ch. 658, L. 1987; amd. Sec. 11, Ch. 333, L. 1989; amd. Sec. 1, Ch. 129, L. 1991; amd. Sec. 3, Ch. 323, L. 1991; amd. Sec. 2, Ch. 813, L. 1991; amd. Sec. 1, Ch. 154, L. 1993; amd. Sec. 8, Ch. 279, L. 1993; amd. Sec. 2, Ch. 458, L. 1993; amd. Sec. 1, Ch. 471, L. 1993; amd. Sec. 6, Ch. 561, L. 1993; amd. Sec. 1, Ch. 131, L. 1995; amd. Sec. 30, Ch. 308, L. 1995; amd. Sec. 19, Ch. 344, L. 1995; amd. Sec. 1, Ch. 424, L. 1995; amd. Sec. 3, Ch. 516, L. 1995; amd. Sec. 2, Ch. 172, L. 1997; amd. Sec. 2, Ch. 500, L. 1997; amd. Sec. 2, Ch. 515, L. 1997; amd. Sec. 1, Ch. 124, L. 1999.

Compiler's Comments

1999 Amendment: Chapter 124 substituted (1)(h) regarding placement of a person pursuant to the FAIM project for former text that read: "a person placed at the employer's worksite as a participant in a public assistance program authorized by Title 53, chapter 4, parts 6 and 7, for workers' compensation purposes only. A person placed at an employer's worksite under Title 53, chapter 4, parts 6 and 7, may not be considered an independent contractor under 39-71-120. An employer may be reimbursed for the premium cost as provided in 53-4-603"; and made minor changes in style. Amendment effective July 1, 1999.

Applicability: Section 7, Ch. 124, L. 1999, provided: "[This act] applies to individuals participating in the FAIM project on and after July 1, 1999."

Cross-References

Independent contractor defined, 39-71-120.

39-71-119. Injury and accident defined. (1) "Injury" or "injured" means:

(a) internal or external physical harm to the body that is established by objective medical findings;

(b) damage to prosthetic devices or appliances, except for damage to eyeglasses, contact lenses, dentures, or hearing aids; or

(c) death.

(2) An injury is caused by an accident. An accident is:

(a) an unexpected traumatic incident or unusual strain;

(b) identifiable by time and place of occurrence;

(c) identifiable by member or part of the body affected; and

(d) caused by a specific event on a single day or during a single work shift.

(3) "Injury" or "injured" does not mean a physical or mental condition arising from:

(a) emotional or mental stress; or

(b) a nonphysical stimulus or activity.

(4) "Injury" or "injured" does not include a disease that is not caused by an accident.

(5) (a) A cardiovascular, pulmonary, respiratory, or other disease, cerebrovascular accident, or myocardial infarction suffered by a worker is an injury only if the accident is the primary cause of the physical condition in relation to other factors contributing to the physical condition.

(b) "Primary cause", as used in subsection (5)(a), means a cause that, with a reasonable degree of medical certainty, is responsible for more than 50% of the physical condition.

History: Ap. p. Sec. 6, Ch. 96, L. 1915; re-en. Sec. 2870, R.C.M. 1921; re-en. Sec. 2870, R.C.M. 1935; amd. Sec. 6, Ch. 162, L. 1961; amd. Sec. 6, Ch. 149, L. 1965; amd. Sec. 1, Ch. 270, L. 1967; amd. Sec. 1, Ch. 488, L. 1973; Sec. 92-418, R.C.M. 1947; Ap. p. Sec. 2, Ch. 488, L. 1973; Sec. 92-418.1, R.C.M. 1947; (3)En. Sec. 6, Ch. 96, L. 1915; re-en. Sec. 2864, R.C.M. 1921; re-en. Sec. 2864, R.C.M. 1935; Sec. 92-412, R.C.M. 1947; R.C.M. 1947, 92-412, 92-418, 92-418.1; amd. Sec. 3, Ch. 464, L. 1987; amd. Sec. 6, Ch. 243, L. 1995.

39-71-120. Independent contractor defined. (1) An "independent contractor" is one who renders service in the course of an occupation and:

(a) has been and will continue to be free from control or direction over the performance of the services, both under the contract and in fact; and

(b) is engaged in an independently established trade, occupation, profession, or business.

(2) An individual performing services for remuneration is considered to be an employee under this chapter unless the requirements of subsection (1) are met.

History: En. 92-438.1 by Sec. 1, Ch. 251, L. 1973; R.C.M. 1947, 92-438.1; amd. Sec. 5, Ch. 314, L. 1987; amd. Sec. 30, Ch. 500, L. 1995; amd. Sec. 11, Ch. 548, L. 1997.

39-71-121. Repealed. Sec. 68, Ch. 464, L. 1987.

History: En. Sec. 2, Ch. 47, L. 1981.

39-71-122. Repealed. Sec. 68, Ch. 464, L. 1987.

History: En. Sec. 3, Ch. 47, L. 1981.

39-71-123. Wages defined. (1) "Wages" means all remuneration paid for services performed by an employee for an employer, or income provided for in subsection (1)(d). Wages include the cash value of all remuneration paid in any medium other than cash. The term includes but is not limited to:

(a) commissions, bonuses, and remuneration at the regular hourly rate for overtime work, holidays, vacations, and sickness periods;

(b) backpay or any similar pay made for or in regards to previous service by the employee for the employer, other than retirement or pension benefits from a qualified plan;

(c) tips or other gratuities received by the employee, to the extent that tips or gratuities are documented by the employee to the employer for tax purposes;

(d) income or payment in the form of a draw, wage, net profit, or substitute for money received or taken by a sole proprietor or partner, regardless of whether the sole proprietor or partner has performed work or provided services for that remuneration;

(e) board, lodging, rent, or housing if it constitutes a part of the employee's remuneration and is based on its actual value; and

(f) payments made to an employee on any basis other than time worked, including but not limited to piecework, an incentive plan, or profit-sharing arrangement.

(2) The term "wages" does not include any of the following:

(a) employee expense reimbursements or allowances for meals, lodging, travel, subsistence, and other expenses, as set forth in department rules;

(b) the amount of the payment made by the employer for employees, if the payment was made for:

(i) retirement or pension pursuant to a qualified plan as defined under the provisions of the Internal Revenue Code;

(ii) sickness or accident disability under a workers' compensation policy;

(iii) medical or hospitalization expenses in connection with sickness or accident disability, including health insurance for the employee or the employee's immediate family;

(iv) death, including life insurance for the employee or the employee's immediate family;

(c) vacation or sick leave benefits accrued but not paid;

(d) special rewards for individual invention or discovery; or

(e) monetary and other benefits paid to a person as part of public assistance provided through the FAIM project, as defined in 53-4-702.

(3) (a) Except as provided in subsection (3)(b), for compensation benefit purposes, the average actual earnings for the four pay periods immediately preceding the injury are the employee's wages, except that if the term of employment for the same employer is less than four pay periods, the employee's wages are the hourly rate times the number of hours in a week for which the employee was hired to work.

(b) For good cause shown, if the use of the last four pay periods does not accurately reflect the claimant's employment history with the employer, the wage may be calculated by dividing the total earnings for an additional period of time, not to exceed 1 year prior to the date of injury, by the number of weeks in that period, including periods of idleness or seasonal fluctuations.

(4) (a) For the purpose of calculating compensation benefits for an employee working concurrent employments, the average actual wages must be calculated as provided in subsection (3). As used in this subsection, "concurrent employment" means employment in which the employee was actually employed at the time of the injury and would have continued to be employed without a break in the term of employment if not for the injury.

(b) The compensation benefits for a covered volunteer must be based on the average actual wages in the volunteer's regular employment, except self-employment as a sole proprietor or partner who elected not to be covered, from which the volunteer is disabled by the injury incurred.

(c) The compensation benefits for an employee working at two or more concurrent remunerated employments must be based on the aggregate of average actual wages of all employments, except for the wages earned by individuals while engaged in the employments outlined in 39-71-401(3)(a) who elected not to be covered, from which the employee is disabled by the injury incurred.

History: En. Sec. 4, Ch. 464, L. 1987; amd. Sec. 12, Ch. 333, L. 1989; amd. Sec. 2, Ch. 129, L. 1991; amd. Sec. 2, Ch. 261, L. 1991; amd. Sec. 2, Ch. 154, L. 1993; amd. Sec. 23, Ch. 619, L. 1993; amd. Sec. 2, Ch. 131, L. 1995; amd. Sec. 7, Ch. 243, L. 1995; amd. Sec. 29, Ch. 491, L. 1997; amd. Sec. 2, Ch. 124, L. 1999; amd. Sec. 2, Ch. 377, L. 1999.

Compiler's Comments

1999 Amendments — Composite Section: Chapter 124 inserted (2)(e) regarding benefits paid to a person through the FAIM project; and made minor changes in style. Amendment effective July 1, 1999.

Chapter 377 in (4)(c) substituted "except for the wages earned by individuals while engaged in the employments outlined in 39-71-401(3)(a)" for "except self-employment as a sole proprietor or partner". Amendment effective April 20, 1999.

Applicability: Section 7, Ch. 124, L. 1999, provided: "[This act] applies to individuals participating in the FAIM project on and after July 1, 1999."

Part 2
Administrative Provisions

Part Cross-References

Definitions, 39-71-116.

Employer defined, 39-71-117.

Employee defined, 39-71-118.

39-71-201. Administration fund. (1) A workers' compensation administration fund is established out of which all costs of administering the Workers' Compensation and Occupational Disease Acts and the statutory occupational safety acts the department is required to administer, with the exception of the subsequent injury fund, as provided for in 39-71-907, and the uninsured employers' fund, are to be paid upon lawful appropriation. The department shall collect and deposit in the state treasury to the credit of the workers' compensation administrative fund:

(a) all fees and penalties provided in 39-71-205, 39-71-223, 39-71-304, 39-71-307, 39-71-308, 39-71-315, 39-71-316, 39-71-401(6), 39-71-2204, 39-71-2205, and 39-71-2337; and

(b) all fees paid by an assessment on each plan No. 1 employer, plan No. 2 insurer, and plan No. 3, the state fund. The assessments must be 3% of the following benefits paid during the preceding calendar year for injuries covered by the Workers' Compensation Act and the Occupational Disease Act without regard to the application of any deductible whether the employer or the insurer pays the losses:

(i) total compensation benefits paid; and

(ii) except for medical benefits in excess of $200,000 per occurrence that are exempt from assessment, total medical benefits paid for medical treatment rendered to an injured worker, including hospital treatment and prescription drugs.

(2) Each plan No. 1 employer, plan No. 2 insurer subject to the provisions of this section, and plan No. 3, the state fund, shall file annually on March 1 in the form and containing the information required by the department a report of paid losses pursuant to subsection (1)(b).

(3) An assessment of the plan No. 1 employer or plan No. 2 insurer may not be less than $500. If at any time during the fiscal year a plan No. 1 employer is granted permission to self-insure or a plan No. 2 insurer is authorized to insure employers under this chapter, that plan No. 1 employer or plan No. 2 insurer is subject to an initial assessment equal to the minimum assessment against plan No. 1 employers and plan No. 2 insurers.

(4) Payment of the assessment required by this section must be submitted by the employer or insurer under plan No. 1, plan No. 2, or plan No. 3 in:

(a) one installment made on or before July 1; or

(b) two equal installments made on or before July 1 and December 31 of each year. If an employer or insurer fails to pay the assessment required under this section, the department may impose a fine of $100 plus interest on the delinquent amount at the annual interest rate of 12%.

(5) (a) Beginning July 1, 2000, each plan No. 2 insurer providing workers' compensation insurance and plan No. 3, the state fund, shall collect from the insurer's policyholders an amount equal to the insurer's assessment through a surcharge based on premium. When collected, assessments may not constitute an element of loss for the purpose of establishing rates for workers' compensation insurance but, for the purpose of collection, must be treated as separate costs imposed upon insured employers.

(b) The total of this assessment must be stated as a separate cost on an insured employer's policy or on a separate document submitted to the insured employer and must be identified as "workers' compensation regulatory assessment surcharge". Each assessment surcharge must be shown as a percentage of the total workers' compensation policyholder premium.

(c) The portion of the plan No. 2 assessment identified as a premium surcharge for an individual plan No. 2 insured employer must be calculated as a percentage to be applied to premium. The percentage applied must be determined by the amount of the plan No. 2 assessment, as determined in subsection (1)(b), divided by the total net premium as calculated under 33-2-705 paid by all plan No. 2 insured employers during the preceding calendar year.

(d) The portion of the plan No. 3 assessment identified as a premium surcharge for an individual plan No. 3 insured employer must be calculated as a percentage to be applied to premium. The percentage applied must be determined by the amount of the plan No. 3 assessment, as determined in subsection (1)(b), divided by the total net premium as calculated under 33-2-705 paid by all plan No. 3 insured employers during the preceding fiscal year.

(e) On or before March 31, 2000, and each March 31 thereafter, the department, in consultation with the advisory organization designated pursuant to 33-16-1023, shall notify plan No. 2 insurers and plan No. 3, the state fund, of the insurer assessment identified as the premium surcharge percentage to be effective for policies written or renewed annually on and after July 1 of that year.

(f) The assessment provided for in subsection (1)(b), which will be identified as a premium surcharge, must be collected at the same time and in the same manner that the premium for the coverage is collected. This premium surcharge must be excluded from the definition of premiums for all purposes, including computation of insurance producers' commissions or premium taxes, except that an insurer may cancel a workers' compensation policy for nonpayment of the premium surcharge. Cancellation must be in accordance with the procedures applicable to the nonpayment of premium.

(6) The administration fund must be debited with expenses incurred by the department in the general administration of the provisions of this chapter, including the salaries of its members, officers, and employees and the travel expenses of the members, officers, and employees, as provided for in 2-18-501 through 2-18-503, as amended, incurred while on the business of the department either within or without the state.

(7) Disbursements from the administration money must be made after being approved by the department upon claim for disbursement.

History: En. 92-116.1 by Sec. 1, Ch. 253, L. 1973; amd. Sec. 1, Ch. 318, L. 1975; amd. Sec. 28, Ch. 453, L. 1977; R.C.M. 1947, 92-116.1; amd. Sec. 18, Ch. 104, L. 1979; amd. Sec. 28, Ch. 557, L. 1987; amd. Sec. 14, Ch. 613, L. 1989; amd. Sec. 2, Ch. 558, L. 1991; amd. Sec. 2, Ch. 555, L. 1993; amd. Sec. 2, Ch. 514, L. 1995; amd. Secs. 1, 2, Ch. 385, L. 1997; amd. Secs. 3, 4, Ch. 377, L. 1999.

Compiler's Comments

1999 Amendment: Section 4, Ch. 377, in (1)(b) substituted "3%" for "2.6%"; in (2) substituted "March 1" for "March 31"; in (4) after "employer" inserted "or insurer"; inserted (5) requiring plan No. 2 insurers and state fund to collect premium surcharge; and made minor changes in style. Amendment effective July 1, 1999.

1999 Amendments Not Codified: Because of the temporary nature of the changes made by sec. 3, Ch. 377, L. 1999, the code commissioner has not codified the following amendments: (Temporary version terminating June 30, 1999) Section 3, Ch. 377, in (1)(b) in fifth sentence substituted "fund the costs of the department's administration of the Workers' Compensation and Occupational Disease Acts and the statutory occupational safety acts administered by the department" for "direct costs identified to the three plans and an equitable portion of the indirect costs based on the ratio of the preceding fiscal year's indirect costs distributed to the plans, using proper accounting and cost allocation procedures. Plan No. 3 must be assessed an amount sufficient to fund the direct costs and an equitable portion of the indirect costs of regulating plan No. 3" and inserted sixth sentence requiring assessment to be equitably apportioned between three plans; and made minor changes in style. Amendment effective April 20, 1999, and terminates June 30, 1999.

Retroactive Applicability: Section 26, Ch. 377, L. 1999, provided: "[Section 3] [39-71-201] applies retroactively, within the meaning of 1-2-109, to occurrences after June 30, 1991."

Cross-References

Collection and disposition of fines, penalties, forfeitures, and fees, 3-10-601.

39-71-202. Office of department. The department shall keep its principal office in the capital of the state. It may rent or lease quarters for the conduct of its administrative duties.

History: En. Sec. 2, Ch. 96, L. 1915; re-en. Sec. 2826, R.C.M. 1921; re-en. Sec. 2826, R.C.M. 1935; amd. Sec. 1, Ch. 234, L. 1969; amd. Sec. 1, Ch. 23, L. 1975; R.C.M. 1947, 92-111; amd. Sec. 64, Ch. 613, L. 1989.

39-71-203. Powers of department — rules. (1) The department is hereby vested with full power, authority, and jurisdiction to do and perform any and all things that are necessary or convenient in the exercise of any power, authority, or jurisdiction conferred upon it under this chapter.

(2) The department may adopt rules to carry out the provisions of this chapter.

History: En. Sec. 18, Ch. 96, L. 1915; re-en. Sec. 2940, R.C.M. 1921; re-en. Sec. 2940, R.C.M. 1935; amd. Sec. 26, Ch. 23, L. 1975; R.C.M. 1947, 92-814; amd. Sec. 5, Ch. 464, L. 1987; amd. Sec. 1, Ch. 525, L. 1987; amd. Sec. 15, Ch. 613, L. 1989.

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

39-71-204. Rescission, alteration, or amendment by department of its orders, decisions, or awards — effect — appeal. (1) The department has continuing jurisdiction over all its orders, decisions, and awards and may, at any time, upon notice, and after opportunity to be heard is given to the parties in interest, rescind, alter, or amend any such order, decision, or award made by it upon good cause appearing therefor.

(2) Any order, decision, or award rescinding, altering, or amending a prior order, decision, or award has the same effect as original orders or awards.

(3) If a party is aggrieved by a department order, the party may appeal the dispute to the workers' compensation judge.

History: En. Sec. 20, Ch. 96, L. 1915; re-en. Sec. 2952, R.C.M. 1921; amd. Sec. 9, Ch. 177, L. 1929; re-en. Sec. 2952, R.C.M. 1935; amd. Sec. 1, Ch. 67, L. 1937; amd. Sec. 40, Ch. 23, L. 1975; R.C.M. 1947, 92-826; amd. Sec. 1, Ch. 63, L. 1979; amd. Sec. 6, Ch. 464, L. 1987; amd. Sec. 64, Ch. 613, L. 1989.

39-71-205. Department authorized to charge certain fees — disposition of. (1) The department shall have power and authority to charge and collect a fee for copies of papers and records, including certified copies of documents and orders filed in its office, sufficient to recover the cost of the material and the time expended, as fixed by the department.

(2) The department shall have power and authority to fix and collect reasonable charges for publications issued under its authority.

(3) The fees charged and collected under this section shall be paid monthly into the treasury of the state to the credit of the state special revenue fund and shall be accompanied by detailed statement thereof.

History: En. Sec. 2, Ch. 96, L. 1915; re-en. Sec. 2834, R.C.M. 1921; re-en. Sec. 2834, R.C.M. 1935; amd. Sec. 165, Ch. 147, L. 1963; amd. Sec. 4, Ch. 23, L. 1975; R.C.M. 1947, 92-119; amd. Sec. 2, Ch. 21, L. 1981; amd. Sec. 1, Ch. 277, L. 1983; amd. Sec. 64, Ch. 613, L. 1989.

39-71-206. Legal advisers of department and state fund — investigative and prosecution services. (1) The attorney general is the legal adviser of the department and the state fund and shall represent either entity in all proceedings if requested by the department or state fund. The department and state fund may employ other attorneys or legal advisers as they consider necessary.

(2) As provided in 2-15-2015, the attorney general shall provide investigative and prosecution services to the state fund with respect to violations of Title 39, chapters 71 and 72.

History: En. Sec. 2, Ch. 96, L. 1915; re-en. Sec. 2835, R.C.M. 1921; re-en. Sec. 2835, R.C.M. 1935; amd. Sec. 1, Ch. 162, L. 1937; amd. Sec. 174, Ch. 147, L. 1963; amd. Sec. 5, Ch. 23, L. 1975; R.C.M. 1947, 92-120; amd. Sec. 1, Ch. 283, L. 1983; amd. Sec. 16, Ch. 613, L. 1989; amd. Sec. 2, Ch. 296, L. 1993.

Cross-References

Compensation plan No. 3, Title 39, ch. 71, part 23.

39-71-207. Repealed. Sec. 4, Ch. 239, L. 1989.

History: En. 92-121 by Sec. 1, Ch. 332, L. 1973; R.C.M. 1947, 92-121; amd. Sec. 51, Ch. 613, L. 1989.

39-71-208. Blank forms, minutes, and records. The department shall cause to be printed such blank forms as it considers necessary to facilitate or promote the efficient administration of this chapter. It shall provide a record of all awards made by the department and such other books or records as it considers necessary for the purpose and efficient administration of this chapter. All such records are to be kept in the office of the department.

History: En. Sec. 2, Ch. 96, L. 1915; re-en. Sec. 2832, R.C.M. 1921; re-en. Sec. 2832, R.C.M. 1935; amd. Sec. 2, Ch. 23, L. 1975; R.C.M. 1947, 92-117; amd. Sec. 1, Ch. 103, L. 1979; amd. Sec. 64, Ch. 613, L. 1989.

39-71-209. Publication of reports and bulletins authorized. The department shall have the power and authority to publish and distribute at its discretion from time to time such further reports and bulletins covering its operations, proceedings, and matters relative to its work as it may deem advisable.

History: En. Sec. 2, Ch. 96, L. 1915; re-en. Sec. 2833, R.C.M. 1921; re-en. Sec. 2833, R.C.M. 1935; amd. Sec. 41, Ch. 93, L. 1969; amd. Sec. 3, Ch. 23, L. 1975; R.C.M. 1947, 92-118; amd. Sec. 12, Ch. 125, L. 1983; amd. Sec. 64, Ch. 613, L. 1989.

39-71-210. Repealed. Sec. 3, Ch. 370, L. 1989.

History: En. Sec. 25, Ch. 96, L. 1915; re-en. Sec. 2968, R.C.M. 1921; re-en. Sec. 2968, R.C.M. 1935; amd. Sec. 50, Ch. 23, L. 1975; R.C.M. 1947, 92-842; amd. Sec. 2, Ch. 103, L. 1979; amd. Sec. 64, Ch. 613, L. 1989.

39-71-211. Fraud detection and prevention unit — expenditure accounting. (1) The state fund shall establish a fraud prevention and detection unit. The unit is responsible for developing detection and prevention procedures, providing detection services, and providing training in the prevention and detection of fraudulent conduct under Title 39, chapters 71 and 72, that is subject to prosecution under Title 45. The unit shall refer all cases of suspected fraudulent conduct to the workers' compensation fraud investigation and prosecution office established in 2-15-2015.

(2) The state fund shall expend money to investigate fraud pursuant to this section and shall separately account for money expended.

History: En. Sec. 3, Ch. 296, L. 1993.

Cross-References

Fraud, 28-2-404 through 28-2-406.

39-71-212 through 39-71-220 reserved.

39-71-221. Public records of department — right to inspect. Each person has a right to inspect any public record of the department, except as otherwise expressly provided by law. For the purposes of 39-71-221 through 39-71-224, "public record" means any writing containing information relating to the conduct of the public's business prepared, owned, used, or retained by a public body regardless of physical form or characteristics.

History: En. 92-844 by Sec. 1, Ch. 25, L. 1975; R.C.M. 1947, 92-844; amd. Sec. 64, Ch. 613, L. 1989.

Cross-References

Right to know, Art. II, sec. 9, Mont. Const.

Public participation in governmental operations, Title 2, ch. 3.

39-71-222. Duties of department regarding inspection and examination of records. The department shall furnish proper and reasonable opportunities for inspection and examination of the records under its control and reasonable facilities for making memoranda or abstracts therefrom during the usual business hours to all persons having occasion to examine them. The department may make reasonable rules necessary for the protection of the records and necessary to prevent interference with the regular discharge of its duties.

History: En. 92-845 by Sec. 2, Ch. 25, L. 1975; R.C.M. 1947, 92-845; amd. Sec. 64, Ch. 613, L. 1989.

Cross-References

Right to know, Art. II, sec. 9, Mont. Const.

Public participation in governmental operations, Title 2, ch. 3.

Adoption and publication of rules, Title 2, ch. 4, part 3.

39-71-223. Certified copies of public records — fees. (1) The department shall, on demand, furnish a certified copy of any public record to a person who has a right to inspect it, if the record is of a nature permitting such copying, or shall furnish reasonable opportunity to inspect or copy.

(2) The department may establish fees reasonably calculated to reimburse the department for its actual cost in making such records available.

History: En. 92-846 by Sec. 3, Ch. 25, L. 1975; R.C.M. 1947, 92-846; amd. Sec. 64, Ch. 613, L. 1989.

Cross-References

Right to know, Art. II, sec. 9, Mont. Const.

Public participation in governmental operations, Title 2, ch. 3.

Adoption and publication of rules, Title 2, ch. 4, part 3.

39-71-224. Records exempt from disclosure — separation of exempt material from nonexempt. (1) In assuring that the right of individual privacy so essential to the well-being of a free society shall not be infringed without the showing of a compelling state interest, the following public records of the department are exempt from disclosure:

(a) information of a personal nature such as personal, medical, or similar information if the public disclosure thereof would constitute an unreasonable invasion of privacy, unless the public interest by clear and convincing evidence requires disclosure in the particular instance. The party seeking disclosure shall have the burden of showing that public disclosure would not constitute an unreasonable invasion of privacy.

(b) any public records or information, the disclosure of which is prohibited by federal law or regulations.

(2) If any public record of the department contains material which is not exempt under subsection (1) of this section, as well as material which is exempt from disclosure, the department shall separate the exempt and nonexempt and make the nonexempt material available for examination.

History: En. 92-847 by Sec. 4, Ch. 25, L. 1975; R.C.M. 1947, 92-847; amd. Sec. 64, Ch. 613, L. 1989.

39-71-225. Workers' compensation database system. (1) The department shall develop a workers' compensation database system to generate management information about Montana's workers' compensation system. The database system must be used to collect and compile information from insurers, employers, medical providers, claimants, adjusters, rehabilitation providers, and the legal profession.

(2) Data collected must be used to provide:

(a) management information to the legislative and executive branches for the purpose of making policy and management decisions, including but not limited to:

(i) performance information to enable the state to enact remedial efforts to ensure quality, control abuse, and enhance cost control;

(ii) information on medical, indemnity, and rehabilitation costs, utilization, and trends;

(iii) information on litigation and attorney involvement for the purpose of identifying trends, problem areas, and the costs of legal involvement;

(b) current and prior claim information to any insurer that is at risk on a claim, or that is alleged to be at risk in any administrative or judicial proceeding, to determine claims liability or for fraud investigation. The department may release information only upon written request by the insurer and may disclose only the claimant's name, claimant's identification number, prior claim number, date of injury, body part involved, and name and address of the insurer and claim adjuster on each claim filed. Information obtained by an insurer pursuant to this section must remain confidential and may not be disclosed to a third party except to the extent necessary for determining claim liability or for fraud investigation; and

(c) current and prior claim information to law enforcement agencies for purposes of fraud investigation or prosecution.

(3) The department is authorized to collect from insurers, employers, medical providers, the legal profession, and others the information necessary to generate the workers' compensation database system.

(4) The workers' compensation database system must be designed in accordance with the following principles:

(a) avoidance of duplication and inconsistency;

(b) reasonable availability of data elements;

(c) value of information collected to be commensurate with the cost of retrieving the collected information;

(d) uniformity to permit efficiency of collection and to allow interstate comparisons;

(e) a workable mechanism to ensure the accuracy of the data collected and to protect the confidentiality of collected data;

(f) reasonable availability of the data at a fair cost to the user;

(g) a broad application to plan No. 1, plan No. 2, and plan No. 3 insurers;

(h) compatibility with electronic data reporting;

(i) reporting procedures that can be handled through private data collection systems that adhere to the provisions of subsections (4)(a) through (4)(h);

(j) implementation of reporting requirements that allow reasonable lead time for compliance.

(5) The department shall publish an annual report on the information compiled.

(6) Users of information obtained from the workers' compensation database under this section are liable for damages arising from misuse or unlawful dissemination of database information.

(7) Beginning July 1, 2000, an insurer or a third-party administrator who submitted 50 or more "first reports of injury" to the department in the

preceding calendar year shall electronically submit the reports and any other reports related to the reported claims in a nationally recognized format specified by department rule.

(8) The department may adopt rules to implement this section.

History: En. Sec. 1, Ch. 512, L. 1993; amd. Sec. 3, Ch. 310, L. 1997; amd. Sec. 5, Ch. 377, L. 1999.

Compiler's Comments

1999 Amendment: Chapter 377 inserted (7) requiring certain reports by insurers to be electronically submitted; and inserted (8) allowing department to adopt rules. Amendment effective July 1, 1999.

39-71-226. Claims expenditures codes. The state fund shall continually review its claims expenditure coding structure to separately account for claims and administrative expenses. If a review demonstrates a compelling need for expenditure information that is not available, the state fund shall expand or modify its claims expenditure coding structure.

History: En. Sec. 20, Ch. 555, L. 1993.

Part 3
Miscellaneous Provisions

Part Cross-References

Definitions, 39-71-116.

Employer defined, 39-71-117.

Employee defined, 39-71-118.

Injury defined, 39-71-119.

39-71-301. Certificates and certified copies as evidence. (1) Copies of official documents and orders filed or deposited according to law in the office of the department, certified to by a member of the department or by the secretary under the official seal of the department to be true copies of the original, shall be evidence in like manner as the originals.

(2) In any court proceeding wherein the question as to whether or not an employer or employee has complied with and is operating under or bound by the provisions of the Workers' Compensation Act of the state of Montana is a question for determination, a certificate by a member of the department, or by the secretary under the official seal of the department, certifying that such employer or employee has or has not complied with and is or is not operating under and is or is not bound by the provisions of the Workers' Compensation Act of the state of Montana shall be prima facie evidence thereof.

History: En. Sec. 18, Ch. 96, L. 1915; re-en. Sec. 2944, R.C.M. 1921; amd. Sec. 8, Ch. 177, L. 1929; re-en. Sec. 2944, R.C.M. 1935; amd. Sec. 31, Ch. 23, L. 1975; R.C.M. 1947, 92-818; amd. Sec. 64, Ch. 613, L. 1989.

Cross-References

Suspension of license for violation of certain labor laws, 18-2-432.

Montana Rules of Appellate Procedure, Title 25, ch. 21.

Requirement of original, Rule 1002, M.R.Ev. (see Title 26, ch. 10).

Public records, Rule 1005, M.R.Ev. (see Title 26, ch. 10).

Grounds for disciplinary action as grounds for license denial — conditions to new licenses, 37-1-137.

39-71-302. What included in computing payroll. In computing the payroll, all wages, as defined in 39-71-123, received by every worker employed under this chapter are included, whether in the form of salary, wage, piecework, or otherwise and whether payable in money, board, or otherwise.

History: En. Sec. 40, Ch. 96, L. 1915; re-en. Sec. 3009, R.C.M. 1921; re-en. Sec. 3009, R.C.M. 1935; amd. Sec. 11, Ch. 235, L. 1947; amd. Sec. 1, Ch. 146, L. 1971; amd. Sec. 5, Ch. 443, L. 1973; R.C.M. 1947, 92-1121; amd. Sec. 54, Ch. 397, L. 1979; amd. Sec. 8, Ch. 333, L. 1989.

39-71-303. Work paid for in property other than money. When an employer procures work to be done, payment for which is to be made in property other than money or its equivalent and the value of that property is speculative or intangible, the wages of the employees receiving the compensation must be determined in accordance with the going wage for the same or similar work in the district or locality where the work is to be performed.

History: En. Sec. 11, Ch. 96, L. 1915; re-en. Sec. 2904, R.C.M. 1921; re-en. Sec. 2904, R.C.M. 1935; amd. Sec. 14, Ch. 23, L. 1975; R.C.M. 1947, 92-607(part); amd. Sec. 64, Ch. 613, L. 1989; amd. Sec. 3, Ch. 172, L. 1997.

39-71-304. Books, records, and payrolls to be open to inspection — penalty for refusal — subpoenas. (1) The books, records, and payrolls of an employer pertinent to the administration of this chapter must always be open to inspection by the department or any authorized employee of the department for the purpose of ascertaining the correctness of the payroll, the number of workers employed, and other information that may be necessary for the department and its management under this chapter. Refusal on the part of an employer to submit the books, records, and payrolls for inspection will subject the offending employer to a penalty not exceeding $500 for each offense, to be collected through a workers' compensation court action in the name of the state and paid into the state treasury.

(2) In addition to the remedy provided in subsection (1), the department may issue subpoenas and compel testimony for the production of evidence, including books, records, papers, documents, and other objects as may be necessary and proper in regard to any investigation or proceeding under this chapter. In the case of disobedience of a subpoena issued and served or the refusal of a witness to testify as to any matter for which the witness may be interrogated in a proceeding before the department, the department may apply to the workers' compensation court for an order to compel compliance with the subpoena or testimony. Disobedience of the court's order constitutes contempt of court.

History: En. Sec. 19, Ch. 96, L. 1915; re-en. Sec. 2946, R.C.M. 1921; re-en. Sec. 2946, R.C.M. 1935; amd. Sec. 166, Ch. 147, L. 1963; amd. Sec. 33, Ch. 23, L. 1975; R.C.M. 1947, 92-820; amd. Sec. 3, Ch. 103, L. 1979; amd. Sec. 55, Ch. 397, L. 1979; amd. Sec. 64, Ch. 613, L. 1989; amd. Sec. 3, Ch. 555, L. 1993; amd. Sec. 10, Ch. 442, L. 1999.

Compiler's Comments

1999 Amendment: Chapter 442 in (1) in second sentence substituted "workers' compensation court action" for "civil action"; near end of second sentence in (2) substituted "workers' compensation court" for "district court"; and made minor changes in style. Amendment effective April 23, 1999.

39-71-305. Repealed. Sec. 16, Ch. 103, L. 1979.

History: En. Sec. 17, Ch. 96, L. 1915; re-en. Sec. 2930, R.C.M. 1921; re-en. Sec. 2930, R.C.M. 1935; amd. Sec. 20, Ch. 23, L. 1975; R.C.M. 1947, 92-804.

39-71-306. Insurers to file summary reports of benefits paid for injuries and statements of medical expenditures. Every insurer shall, on or before the 15th day after each state government fiscal quarter, file with the department:

(1) summary reports of benefits for all compensation payments made during the previous state fiscal quarter to injured workers or their beneficiaries or dependents; and

(2) statements showing the amounts expended during the previous state fiscal quarter for all medical services for injured workers.

History: **En. Sec. 17, Ch. 96, L. 1915; re-en. Sec. 2932, R.C.M. 1921; re-en. Sec. 2932, R.C.M. 1935; amd. Sec. 21, Ch. 23, L. 1975; R.C.M. 1947, 92-806; amd. Sec. 56, Ch. 397, L. 1979; amd. Sec. 17, Ch. 613, L. 1989; amd. Sec. 3, Ch. 558, L. 1991.**

Cross-References

Compensation plan No. 1, Title 39, ch. 71, part 21.

Compensation plan No. 2, Title 39, ch. 71, part 22.

39-71-307. Employers and insurers to file reports of accidents — penalty. (1) Every employer and every insurer is required to file with the department, under department rules, a full and complete report of every accident to an employee arising out of or in the course of employment and resulting in loss of life or injury to the employee. The reports must be furnished to the department in the form and detail as the department prescribes and must provide specific answers to all questions required by the department under its rules. However, if an employer is unable to answer a question, the employer shall state the reason for the employer's inability to answer.

(2) Every insurer transacting business under this chapter shall, at the time and in the manner prescribed by the department, make and file with the department the reports of accidents as the department requires.

(3) An employer, insurer, or adjuster who refuses or neglects to submit to the department reports necessary for the proper filing and review of a claim, as provided in subsection (1), shall be assessed a penalty of not less than $200 or more than $500 for each offense. The department shall assess and collect the penalty. An insurer may contest a penalty assessment in a hearing conducted according to department rules.

History: **(1)En. Sec. 17, Ch. 96, L. 1915; re-en. Sec. 2934, R.C.M. 1921; re-en. Sec. 2934, R.C.M. 1935; amd. Sec. 22, Ch. 23, L. 1975; Sec. 92-808, R.C.M. 1947; (2)En. Sec. 35, Ch. 96, L. 1915; re-en. Sec. 2987, R.C.M. 1921; re-en. Sec. 2987, R.C.M. 1935; amd. Sec. 64, Ch. 23, L. 1975; Sec. 92-1010, R.C.M. 1947; R.C.M. 1947, 92-808, 92-1010; amd. Sec. 14, Ch. 333, L. 1989; amd. Secs. 18, 64, Ch. 613, L. 1989; amd. Sec. 2, Ch. 619, L. 1993.**

39-71-308. Neglect or refusal of public corporation to file payroll reports — arbitrary assessment by department. If a public corporation insured by the state fund neglects or refuses to file prescribed payroll reports of its employees, the department may levy an arbitrary assessment upon the public corporation in an amount of $75 for each assessment. The assessment must be collected in the manner provided in this chapter for the collection of assessments.

History: **En. Sec. 3, Ch. 96, L. 1915; amd. Sec. 1, Ch. 100, L. 1919; amd. Sec. 1, Ch. 196, L. 1921; re-en. Sec. 2840, R.C.M. 1921; re-en. Sec. 2840, R.C.M. 1935; amd. Sec. 1, Ch. 410, L. 1971; amd. Sec. 6, Ch. 23, L. 1975; R.C.M. 1947, 92-206(part); amd. Sec. 3, Ch. 21, L. 1981; amd. Sec. 19, Ch. 613, L. 1989.**

39-71-309. Repealed. Sec. 68, Ch. 464, L. 1987.

History: **En. 92-706.1 by Sec. 1, Ch. 252, L. 1973; amd. Sec. 1, Ch. 43, L. 1975; amd. Sec. 1, Ch. 189, L. 1975; R.C.M. 1947, 92-706.1(2); amd. Sec. 57, Ch. 397, L. 1979.**

39-71-310 through 39-71-314 reserved.

39-71-315. Prohibited actions — penalty. (1) The following actions by a medical provider constitute violations and are subject to the penalty in subsection (2):

(a) failing to document, under oath, the provision of the services or treatment for which compensation is claimed under chapter 72 or this chapter; or

(b) referring a worker for treatment or diagnosis of an injury or illness that is compensable under chapter 72 or this chapter to a facility owned wholly or in part by the provider, unless the provider informs the worker of the ownership interest and provides the name and address of alternate facilities, if any exist.

(2) A person who violates this section may be assessed a penalty of not less than $200 or more than $500 for each offense. The department shall assess and collect the penalty. Penalties collected pursuant to this section must be paid into the state general fund. The workers' compensation court has jurisdiction over actions brought to collect the penalty and over disputes concerning the penalty assessment. Disputes brought pursuant to this section are not subject to mediation.

(3) Subsection (1)(b) does not apply to medical services provided to an injured worker by a treating physician with an ownership interest in a managed care organization that has been certified by the department.

History: En. Sec. 16, Ch. 619, L. 1993; amd. Sec. 4, Ch. 516, L. 1995; amd. Sec. 11, Ch. 442, L. 1999.

Compiler's Comments

1999 Amendment: Chapter 442 in (2) inserted third through fifth sentences concerning penalty payment, jurisdiction, and nonmediation. Amendment effective April 23, 1999.

39-71-316. Filing true claim — obtaining benefits through deception or other fraudulent means. (1) A person filing a claim under chapter 72 or this chapter, by signing the claim, affirms the information filed is true and correct to the best of that person's knowledge.

(2) (a) A person who obtains or assists in obtaining benefits to which the person is not entitled or who obtains or assists another person in obtaining benefits to which the other person is not entitled under chapter 72 or this chapter is guilty of theft and may be prosecuted under 45-6-301. A county attorney or the attorney general may initiate criminal proceedings against the person. This subsection includes but is not limited to a person who is receiving temporary total disability benefits, permanent total disability benefits, or rehabilitation benefits while working without the knowledge and concurrence of the insurer.

(b) As used in subsection (2)(a), "person" includes but is not limited to an employee, employer, insurer, or medical service provider.

(3) (a) The department may require a person convicted of theft under 45-6-301(5) to pay to the department an amount equal to 10 times the amount paid by an insurer on the false claim, provided that the amount does not exceed $50,000. If upon demand of the department the person refuses to pay the fine, the department may petition the workers' compensation court to collect the money owed.

(b) The department shall:

(i) use the money collected pursuant to subsection (3)(a) to administer and enforce the provisions of this section; and

(ii) forward any surplus money to the department of justice. The forwarded money must be used exclusively for the staffing and operation of the workers' compensation fraud investigation and prosecution office established in 2-15-2015.

(c) This section does not limit an insurer's civil remedies to collect for money paid to a person convicted under 45-6-301(5).

(4) A person licensed under the provisions of Title 37 is subject to suspension, revocation, or denial of a license if the person knowingly claims or assists in the claiming of benefits in violation of the provisions of chapter 72 or this chapter.

History: En. Sec. 7, Ch. 464, L. 1987; amd. Sec. 4, Ch. 296, L. 1993; amd. Sec. 1, Ch. 618, L. 1993; amd. Sec. 9, Ch. 619, L. 1993; amd. Sec. 12, Ch. 442, L. 1999.

Compiler's Comments

1999 Amendment: Chapter 442 in second sentence of (3)(a) after "may" substituted "petition the workers' compensation court" for "institute suit"; and made minor changes in style. Amendment effective April 23, 1999.

39-71-317. Employer not to terminate worker for filing claim — preference — jurisdiction over dispute. (1) An employer may not use as grounds for terminating a worker the filing of a claim under chapter 72 or this chapter. The district court has exclusive jurisdiction over disputes concerning the grounds for termination under this section.

(2) When an injured worker is capable of returning to work within 2 years from the date of injury and has received a medical release to return to work, the worker must be given a preference over other applicants for a comparable position that becomes vacant if the position is consistent with the worker's physical condition and vocational abilities.

(3) This preference applies only to employment with the employer for whom the employee was working at the time the injury occurred.

(4) The workers' compensation court has exclusive jurisdiction to administer or resolve a dispute concerning the reemployment preference under this section. A dispute concerning the reemployment preference is not subject to mediation or a contested case hearing.

History: En. Sec. 20, Ch. 464, L. 1987; amd. Sec. 64, Ch. 613, L. 1989; amd. Sec. 13, Ch. 442, L. 1999.

Compiler's Comments

1999 Amendment: Chapter 442 in (1) inserted second sentence concerning exclusive jurisdiction; in first sentence of (4) after "The" deleted "department and", after "court" substituted "has exclusive" for "do not have", and after "dispute" inserted "concerning the reemployment preference" and inserted second sentence concerning nonmediation and no contested case hearing for former sentence that read: "Exclusive jurisdiction is with the district court"; and made minor changes in style. Amendment effective April 23, 1999.

39-71-318. Hearings — rules of evidence — conduct — filing limits — exception. (1) The statutory and common-law rules of evidence do not apply to a hearing before the department under this chapter. A petition for a hearing before the department must be filed within 2 years after benefits are denied.

(2) Except for a hearing before the workers' compensation court, a hearing under this chapter may be conducted by telephone or by videoconference.

History: En. Sec. 1, Ch. 558, L. 1991; amd. Sec. 5, Ch. 516, L. 1995; amd. Sec. 7, Ch. 276, L. 1997.

Cross-References

Montana Rules of Evidence, Title 26, ch. 10.

Part 4

Coverage, Liability, and Subrogation

Part Cross-References

Definitions, 39-71-116.
Employer defined, 39-71-117.
Employee defined, 39-71-118.
Injury defined, 39-71-119.

39-71-401. Employments covered and employments exempted. (1) Except as provided in subsection (2), the Workers' Compensation Act applies to all employers, as defined in 39-71-117, and to all employees, as defined in 39-71-118. An employer who has any employee in service under any appointment or contract of hire, expressed or implied, oral or written, shall elect to be bound by the provisions of compensation plan No. 1, 2, or 3. Each employee whose employer is bound by the Workers' Compensation Act is subject to and bound by the compensation plan that has been elected by the employer.

(2) Unless the employer elects coverage for these employments under this chapter and an insurer allows an election, the Workers' Compensation Act does not apply to any of the following employments:

(a) household and domestic employment;

(b) casual employment as defined in 39-71-116;

(c) employment of a dependent member of an employer's family for whom an exemption may be claimed by the employer under the federal Internal Revenue Code;

(d) employment of sole proprietors, working members of a partnership, working members of a limited liability partnership, or working members of a member-managed limited liability company, except as provided in subsection (3);

(e) employment of a broker or salesperson performing under a license issued by the board of realty regulation;

(f) employment as a direct seller as defined by 26 U.S.C. 3508;

(g) employment for which a rule of liability for injury, occupational disease, or death is provided under the laws of the United States;

(h) employment of a person performing services in return for aid or sustenance only, except employment of a volunteer under 67-2-105;

(i) employment with a railroad engaged in interstate commerce, except that railroad construction work is included in and subject to the provisions of this chapter;

(j) employment as an official, including a timer, referee, or judge, at a school amateur athletic event, unless the person is otherwise employed by a school district;

(k) employment of a person performing services as a newspaper carrier or freelance correspondent if the person performing the services or a parent or guardian of the person performing the services in the case of a minor has acknowledged in writing that the person performing the services and the services are not covered. As used in this subsection, "freelance correspondent" is a person who submits articles or photographs for publication and is paid by the article or by the photograph. As used in this subsection, "newspaper carrier":

(i) is a person who provides a newspaper with the service of delivering newspapers singly or in bundles; but

(ii) does not include an employee of the paper who, incidentally to the employee's main duties, carries or delivers papers.

(l) cosmetologist's services and barber's services as defined in 39-51-204(1)(e);

(m) a person who is employed by an enrolled tribal member or an association, business, corporation, or other entity that is at least 51% owned by an enrolled tribal member or members, whose business is conducted solely within the exterior boundaries of an Indian reservation;

(n) employment of a jockey who is performing under a license issued by the board of horseracing from the time that the jockey reports to the scale room prior to a race through the time that the jockey is weighed out after a race if the jockey has acknowledged in writing, as a condition of licensing by the board of horseracing, that the jockey is not covered under the Workers' Compensation Act while performing services as a jockey;

(o) employment of an employer's spouse for whom an exemption based on marital status may be claimed by the employer under 26 U.S.C. 7703;

(p) a person who performs services as a petroleum land professional. As used in this subsection, a "petroleum land professional" is a person who:

(i) is engaged primarily in negotiating for the acquisition or divestiture of mineral rights or in negotiating a business agreement for the exploration or development of minerals;

(ii) is paid for services that are directly related to the completion of a contracted specific task rather than on an hourly wage basis; and

(iii) performs all services as an independent contractor pursuant to a written contract.

(q) an officer of a quasi-public or a private corporation or manager of a manager-managed limited liability company who qualifies under one or more of the following provisions:

(i) the officer or manager is not engaged in the ordinary duties of a worker for the corporation or the limited liability company and does not receive any pay from the corporation or the limited liability company for performance of the duties;

(ii) the officer or manager is engaged primarily in household employment for the corporation or the limited liability company;

(iii) the officer or manager either:

(A) owns 20% or more of the number of shares of stock in the corporation or owns 20% or more of the limited liability company; or

(B) owns less than 20% of the number of shares of stock in the corporation or limited liability company if the officer's or manager's shares when aggregated with the shares owned by a person or persons listed in subsection (2)(q)(iv) total 20% or more of the number of shares in the corporation or limited liability company; or

(iv) the officer or manager is the spouse, child, adopted child, stepchild, mother, father, son-in-law, daughter-in-law, nephew, niece, brother, or sister of a corporate officer who meets the requirements of subsection (2)(q)(iii)(A) or (2)(q)(iii)(B).

(r) a person who is an officer or a manager of a ditch company as defined in 27-1-731;

(s) service performed by an ordained, commissioned, or licensed minister of a church in the exercise of the church's ministry or by a member of a religious order in the exercise of duties required by the order.

(3) (a) A sole proprietor, a working member of a partnership, a working member of a limited liability partnership, or a working member of a member-managed limited liability company who represents to the public that the person is an independent contractor shall elect to be bound personally and individually by the provisions of compensation plan No. 1, 2, or 3 but may apply to the department for an exemption from the Workers' Compensation Act.

(b) The application must be made in accordance with the rules adopted by the department. There is a $25 fee for the initial application. Any subsequent application renewal must be accompanied by a $25 application fee. The application fee must be deposited in the administration fund established in 39-71-201 to offset the costs of administering the program.

(c) When an application is approved by the department, it is conclusive as to the status of an independent contractor and precludes the applicant from obtaining benefits under this chapter.

(d) The exemption, if approved, remains in effect for 3 years following the date of the department's approval. To maintain the independent contractor status, an independent contractor shall every 3 years submit a renewal application. A renewal application must be submitted for all independent contractor exemptions approved on or after July 1, 1995. The renewal application and the $25 renewal application fee must be received by the department at least 30 days before the anniversary date of the previously approved exemption.

(e) A person who makes a false statement or misrepresentation concerning that person's status as an exempt independent contractor is subject to a civil penalty of $1,000. The department may impose the penalty for each false statement or misrepresentation. The penalty must be paid to the uninsured employers' fund. The lien provisions of 39-71-506 apply to the penalty imposed by this section.

(f) If the department denies the application for exemption, the applicant may, after mediation pursuant to department rules, contest the denial by petitioning the workers' compensation court.

(4) (a) A corporation or a manager-managed limited liability company shall provide coverage for its employees under the provisions of compensation plan No. 1, 2, or 3. A quasi-public corporation, a private corporation, or a manager-managed limited liability company may elect coverage for its corporate officers or managers, who are otherwise exempt under subsection (2), by giving a written notice in the following manner:

(i) if the employer has elected to be bound by the provisions of compensation plan No. 1, by delivering the notice to the board of directors of the corporation or to the management organization of the manager-managed limited liability company; or

(ii) if the employer has elected to be bound by the provisions of compensation plan No. 2 or 3, by delivering the notice to the board of directors of the corporation or to the management organization of the manager-managed limited liability company and to the insurer.

(b) If the employer changes plans or insurers, the employer's previous election is not effective and the employer shall again serve notice to its insurer and to its board of directors or the management organization of the manager-managed limited liability company if the employer elects to be bound.

(5) The appointment or election of an employee as an officer of a corporation, a partner in a partnership, a partner in a limited liability partnership, or a member in or a manager of a limited liability company for the purpose of exempting the employee from coverage under this chapter does not entitle the officer, partner, member, or manager to exemption from coverage.

(6) Each employer shall post a sign in the workplace at the locations where notices to employees are normally posted, informing employees about the employer's current provision of workers' compensation insurance. A workplace is any location where an employee performs any work-related act in the course of employment, regardless of whether the location is temporary or permanent, and includes the place of business or property of a third person while the employer has access to or control over the place of business or property for the purpose of carrying on the employer's usual trade, business, or occupation. The sign must be provided by the department, distributed through insurers or directly by the department, and posted by employers in accordance with rules adopted by the department. An employer who purposely or knowingly fails to post a sign as provided in this subsection is subject to a $50 fine for each citation.

History: (1), (2)(a) thru (f)En. 92-202.1 by Sec. 1, Ch. 492, L. 1973; amd. Sec. 1, Ch. 550, L. 1977; Sec. 92-202.1, R.C.M. 1947; (2)(g)En. Sec. 17, Ch. 96, L. 1915; re-en. Sec. 2931, R.C.M. 1921; re-en. Sec. 2931, R.C.M. 1935; Sec. 92-805, R.C.M. 1947; R.C.M. 1947, 92-202.1, 92-805; amd. Sec. 58, Ch. 397, L. 1979; amd. Sec. 1, Ch. 470, L. 1983; amd. Sec. 1, Ch. 94, L. 1985; amd. Sec. 1, Ch. 100, L. 1985; amd. Sec. 3, Ch. 336, L. 1985; amd. Sec. 1, Ch. 148, L. 1987; amd. Sec. 1, Ch. 290, L. 1987; amd. Sec. 6, Ch. 314, L. 1987; amd. Sec. 10, Ch. 464, L. 1987; amd. Sec. 2, Ch. 526, L. 1987; amd. Sec. 1, Ch. 33, L. 1989; amd. Sec. 64, Ch. 613, L. 1989; amd. Sec. 39, Ch. 16, L. 1991; amd. Sec. 2, Ch. 573, L. 1991; amd. Sec. 4, Ch. 555, L. 1993; amd. Sec. 3, Ch. 48, L. 1995; amd. Sec. 2, Ch. 95, L. 1995; amd. Sec. 1, Ch. 112, L. 1995; amd. Sec. 1, Ch. 142, L. 1995; amd. Sec. 6, Ch. 516, L. 1995; amd. Sec. 4, Ch. 172, L. 1997; amd. Sec. 4, Ch. 310, L. 1997; amd. Sec. 1, Ch. 386, L. 1997; amd. Sec. 30, Ch. 491, L. 1997; amd. Sec. 12, Ch. 548, L. 1997; amd. Sec. 14, Ch. 442, L. 1999.

Compiler's Comments

1999 Amendment: Chapter 442 in (3)(f) after "may" inserted "after mediation pursuant to department rules" and after "petitioning" substituted "the workers' compensation court" for "for review of the decision by an appeals referee in the manner provided for in 39-51-1109" and deleted former second sentence that read: "An applicant dissatisfied with the decision of the appeals referee may appeal the decision in accordance with the procedure established in 39-51-2403 and 39-51-2404." Amendment effective April 23, 1999.

Retroactive Applicability: Section 31(1), Ch. 442, L. 1999, provided that this section applies retroactively, within the meaning of 1-2-109, to claims for injuries occurring before April 23, 1999, unless a party elects, after notification by the department of labor and industry, to remain in the contested case process.

Cross-References

Regulation of real estate brokers and salespersons, Title 37, ch. 51.

Exemption, 39-51-604.

Compensation plan No. 1, Title 39, ch. 71, part 21.

Compensation plan No. 2, Title 39, ch. 71, part 22.

Compensation plan No. 3, Title 39, ch. 71, part 23.

39-71-402. Extraterritorial application and reciprocity — exception. (1) If a worker employed in this state who is subject to the provisions of this chapter temporarily leaves the state incidental to that employment and receives an injury arising out of and in the course of employment, the provisions of this chapter apply to the worker as though the worker were injured within this state.

(2) Except as provided in subsection (5), if a worker from another state and the worker's employer from another state are temporarily engaged in work within this state, this chapter does not apply to them:

(a) if the employer and employee are bound by the provisions of the workers' compensation law or similar law of the other state that applies to them while they are in the state of Montana; and

(b) if the Workers' Compensation Act of this state is recognized and given effect as the exclusive remedy for workers employed in this state who are injured while temporarily employed in the other state.

(3) A certificate from an authorized officer of the workers' compensation department or similar agency of another state certifying that an employer of the other state is bound by the Workers' Compensation Act of the state and that its act will be applied to employees of the employer while in the state of Montana is prima facie evidence of the application of the workers' compensation law of the certifying state.

(4) The department may, with the approval of the governor, enter into agreements with workers' compensation agencies of other states for the purpose of promulgating regulations not inconsistent with the provisions of this chapter to carry out the extraterritorial application of the workers' compensation laws of the agreeing states.

(5) Employers from another state that are engaged in the construction industry, as defined in 39-71-116, and that employ workers from another state shall obtain coverage for those workers under the provisions of this chapter.

History: En. Sec. 16, Ch. 96, L. 1915; re-en. Sec. 2911, R.C.M. 1921; re-en. Sec. 2911, R.C.M. 1935; amd. Sec. 1, Ch. 70, L. 1967; amd. Sec. 17, Ch. 23, L. 1975; amd. Sec. 8, Ch. 550, L. 1977; R.C.M. 1947, 92-614(2) thru (5); amd. Sec. 64, Ch. 613, L. 1989; amd. Sec. 4, Ch. 480, L. 1991; amd. Sec. 3, Ch. 458, L. 1993.

Cross-References

Governor — sole official organ of communication, 2-15-201.

39-71-403. *(Temporary)* **Plan three exclusive for state agencies — election of plan by other public corporations — financing of self-insurance fund.** (1) If a state agency is the employer, the terms, conditions, and provisions of compensation plan No. 3, state fund, are exclusive, compulsory, and obligatory upon both employer and employee. Any sums necessary to be paid under the provisions of this chapter by any state agency are considered to be ordinary and necessary expense of the agency. The agency shall make appropriation of and pay the sums into the state fund at the time and in the manner provided for in this chapter, notwithstanding that the state agency may have failed to anticipate the ordinary and necessary expense in any budget, estimate of expenses, appropriations, ordinances, or otherwise.

(2) A public corporation, other than a state agency, may elect coverage under compensation plan No. 1, plan No. 2, or plan No. 3, separately or jointly

with any other public corporation other than a state agency. A public corporation electing compensation plan No. 1 may purchase reinsurance or issue bonds or notes pursuant to subsection (3)(b). A public corporation electing compensation plan No. 1 is subject to the same provisions as a private employer electing compensation plan No. 1.

(3) (a) A public corporation, other than a state agency, that elects plan No. 1 may establish a fund sufficient to pay the compensation and benefits provided for in this chapter and chapter 72 and to discharge all liabilities that reasonably incur during the fiscal year for which the election is effective. Proceeds from the fund must be used only to pay claims covered by this chapter and chapter 72 and for actual and necessary expenses required for the efficient administration of the fund, including debt service on any bonds and notes issued pursuant to subsection (3)(b).

(b) (i) A public corporation, other than a state agency, separately or jointly with another public corporation, other than a state agency, may issue and sell its bonds and notes for the purpose of establishing, in whole or in part, the self-insurance workers' compensation fund provided for in subsection (3)(a) and to pay the costs associated with the sale and issuance of the bonds. Bonds and notes may be issued in an amount not exceeding 3% of the taxable valuation of the public corporation as of the date of issue. The bonds and notes must be authorized by resolution of the governing body of the public corporation and are payable from an annual property tax levied in the amount necessary to pay principal and interest on the bonds or notes. This authority to levy an annual property tax exists despite any provision of law or maximum levy limitation to the contrary. The revenues derived from the sale of the bonds and notes may not be used for any other purpose.

(ii) The bonds and notes:

(A) may be sold at public or private sale;

(B) do not constitute debt within the meaning of any statutory debt limitation; and

(C) may contain other terms and provisions as the governing body determines.

(iii) Two or more public corporations, other than state agencies, may agree to exercise their respective borrowing powers jointly under this subsection (3)(b) or may authorize a joint board to exercise the powers on their behalf.

(iv) The fund established from the proceeds of bonds and notes issued and sold under this subsection (3)(b) may, if sufficient, be used in lieu of a surety bond, reinsurance, specific and aggregate excess insurance, or any other form of additional security necessary to demonstrate the public corporation's ability to discharge all liabilities as provided in subsection (3)(a). Subject to the 3% of taxable valuation limitation in subsection (3)(b)(i), a public corporation may issue bonds and notes to establish a fund sufficient to discharge liabilities for periods greater than 1 year.

(4) All money in the fund established under subsection (3)(a) not needed to meet immediate expenditures must be invested by the governing body of the public corporation or the joint board created by two or more public corporations as provided in subsection (3)(b)(iii), and all proceeds of the investment must be credited to the fund.

39-71-403. *(Effective July 1, 2000)* **Plan three exclusive for state agencies — election of plan by public corporations — financing of self-insurance fund — exemption for university system — definition.** (1) Except as provided in subsection (5), if a state agency is the employer, the terms, conditions, and provisions of compensation plan No. 3, state fund, are exclusive, compulsory, and obligatory upon both employer and employee. Any sums necessary to be paid under the provisions of this chapter by a state agency are considered to be ordinary and necessary expenses of the agency. The agency shall make appropriation of and pay the sums into the state fund at the time and in the manner provided for in this chapter, notwithstanding that the state agency may have failed to anticipate the ordinary and necessary expense in a budget, estimate of expenses, appropriations, ordinances, or otherwise.

(2) A public corporation, other than a state agency, may elect coverage under compensation plan No. 1, plan No. 2, or plan No. 3, separately or jointly with any other public corporation other than a state agency. A public corporation electing compensation plan No. 1 may purchase reinsurance or issue bonds or notes pursuant to subsection (3)(b). A public corporation electing compensation plan No. 1 is subject to the same provisions as a private employer electing compensation plan No. 1.

(3) (a) A public corporation, other than a state agency, that elects plan No. 1 may establish a fund sufficient to pay the compensation and benefits provided for in this chapter and chapter 72 and to discharge all liabilities that are reasonably incurred during the fiscal year for which the election is effective. Proceeds from the fund must be used only to pay claims covered by this chapter and chapter 72 and for actual and necessary expenses required for the efficient administration of the fund, including debt service on any bonds and notes issued pursuant to subsection (3)(b).

(b) (i) A public corporation, other than a state agency, separately or jointly with another public corporation, other than a state agency, may issue and sell its bonds and notes for the purpose of establishing, in whole or in part, the self-insurance workers' compensation fund provided for in subsection (3)(a) and to pay the costs associated with the sale and issuance of the bonds. Bonds and notes may be issued in an amount not exceeding 3% of the taxable valuation of the public corporation as of the date of issue. The bonds and notes must be authorized by resolution of the governing body of the public corporation and are payable from an annual property tax levied in the amount necessary to pay principal and interest on the bonds or notes. This authority to levy an annual property tax exists despite any provision of law or maximum levy limitation to the contrary. The revenue derived from the sale of the bonds and notes may not be used for any other purpose.

(ii) The bonds and notes:

(A) may be sold at public or private sale;

(B) do not constitute debt within the meaning of any statutory debt limitation; and

(C) may contain other terms and provisions as the governing body determines.

(iii) Two or more public corporations, other than state agencies, may agree to exercise their respective borrowing powers jointly under this subsection (3)(b) or may authorize a joint board to exercise the powers on their behalf.

(iv) The fund established from the proceeds of bonds and notes issued and sold under this subsection (3)(b) may, if sufficient, be used in lieu of a surety bond, reinsurance, specific and aggregate excess insurance, or any other form of additional security necessary to demonstrate the public corporation's ability to discharge all liabilities as provided in subsection (3)(a). Subject to the 3% of taxable valuation limitation in subsection (3)(b)(i), a public corporation may issue bonds and notes to establish a fund sufficient to discharge liabilities for periods greater than 1 year.

(4) All money in the fund established under subsection (3)(a) not needed to meet immediate expenditures must be invested by the governing body of the public corporation or the joint board created by two or more public corporations as provided in subsection (3)(b)(iii), and all proceeds of the investment must be credited to the fund.

(5) The provisions of subsection (1) do not apply to the Montana university system.

(6) As used in subsections (2) through (4), "public corporation" includes the Montana university system.

History: En. Sec. 3, Ch. 96, L. 1915; amd. Sec. 1, Ch. 100, L. 1919; amd. Sec. 1, Ch. 196, L. 1921; re-en. Sec. 2840, R.C.M. 1921; re-en. Sec. 2840, R.C.M. 1935; amd. Sec. 1, Ch. 410, L. 1971; amd. Sec. 6, Ch. 23, L. 1975; R.C.M. 1947, 92-206(part); amd. Sec. 1, Ch. 155, L. 1979; (2) thru (4)En. Sec. 2, Ch. 155, L. 1979; amd. Sec. 4, Ch. 21, L. 1981; amd. Sec. 97, Ch. 370, L. 1987; amd. Sec. 20, Ch. 613, L. 1989; amd. Sec. 1, Ch. 665, L. 1989; amd. Sec. 1, Ch. 560, L. 1999.

Compiler's Comments

1999 Amendment: Chapter 560 at beginning of (1) inserted exception clause; inserted (5) exempting Montana university system from subsection (1); inserted (6) defining public corporation; and made minor changes in style. Amendment effective July 1, 2000.

Cross-References

Compensation plan No. 1, Title 39, ch. 71, part 21.

Compensation plan No. 2, Title 39, ch. 71, part 22.

Compensation plan No. 3, Title 39, ch. 71, part 23.

39-71-404. Repealed. Sec. 16, Ch. 103, L. 1979.

History: En. Sec. 3, Ch. 96, L. 1915; amd. Sec. 1, Ch. 100, L. 1919; amd. Sec. 1, Ch. 196, L. 1921; re-en. Sec. 2840, R.C.M. 1921; re-en. Sec. 2840, R.C.M. 1935; amd. Sec. 1, Ch. 410, L. 1971; amd. Sec. 6, Ch. 23, L. 1975; R.C.M. 1947, 92-206(part).

39-71-405. Liability of employer who contracts work out. (1) An employer who contracts with an independent contractor to have work performed of a kind which is a regular or a recurrent part of the work of the trade, business, occupation, or profession of such employer is liable for the payment of benefits under this chapter to the employees of the contractor if the contractor has not properly complied with the coverage requirements of the Worker's Compensation Act. Any insurer who becomes liable for payment of benefits may recover the amount of benefits paid and to be paid and necessary expenses from the contractor primarily liable therein.

(2) Where an employer contracts to have any work to be done by a contractor other than an independent contractor, and the work so contracted to be done is a part or process in the trade or business of the employer, then the employer is liable to pay all benefits under this chapter to the same extent as if the work were done without the intervention of the contractor, and the work so contracted to be done shall not be construed to be casual employment. Where an employer contracts work to be done as specified in this subsection,

the contractor and the contractor's employees shall come under that plan of compensation adopted by the employer.

(3) Where an employer contracts any work to be done, wholly or in part for the employer, by an independent contractor, where the work so contracted to be done is casual employment as to such employer, then the contractor shall become the employer for the purposes of this chapter.

History: (1)En. 92-410.1 by Sec. 1, Ch. 154, L. 1973; Sec. 92-410.1, R.C.M. 1947; (2), (3)En. Sec. 11, Ch. 96, L. 1915; re-en. Secs. 2901, 2902, 2903, R.C.M. 1921; re-en. Secs. 2901, 2902, 2903, R.C.M. 1935; Secs. 92-604, 92-605, 92-606, R.C.M. 1947; R.C.M. 1947, 92-410.1(part), 92-604, 92-605, 92-606; amd. Sec. 4, Ch. 103, L. 1979.

Cross-References

Independent contractor defined, 39-71-120.

39-71-406. Deduction from wages of any part of premium a misdemeanor. It is unlawful for the employer to deduct or obtain any part of any premium required to be paid by this chapter from the wages or earnings of the employer's workers, and the making or attempt to make any premium deduction is a misdemeanor.

History: En. Sec. 17, Ch. 96, L. 1915; re-en. Sec. 2937, R.C.M. 1921; re-en. Sec. 2937, R.C.M. 1935; R.C.M. 1947, 92-811; amd. Sec. 59, Ch. 397, L. 1979; amd. Sec. 6, Ch. 101, L. 1985; amd. Sec. 8, Ch. 637, L. 1993; amd. Sec. 8, Ch. 276, L. 1997.

Cross-References

Penalty for misdemeanor, 46-18-212.

39-71-407. Liability of insurers — limitations. (1) Each insurer is liable for the payment of compensation, in the manner and to the extent provided in this section, to an employee of an employer that it insures who receives an injury arising out of and in the course of employment or, in the case of death from the injury, to the employee's beneficiaries, if any.

(2) (a) An insurer is liable for an injury, as defined in 39-71-119, if the injury is established by objective medical findings and if the claimant establishes that it is more probable than not that:

(i) a claimed injury has occurred; or

(ii) a claimed injury aggravated a preexisting condition.

(b) Proof that it was medically possible that a claimed injury occurred or that the claimed injury aggravated a preexisting condition is not sufficient to establish liability.

(3) An employee who suffers an injury or dies while traveling is not covered by this chapter unless:

(a) (i) the employer furnishes the transportation or the employee receives reimbursement from the employer for costs of travel, gas, oil, or lodging as a part of the employee's benefits or employment agreement; and

(ii) the travel is necessitated by and on behalf of the employer as an integral part or condition of the employment; or

(b) the travel is required by the employer as part of the employee's job duties.

(4) An employee is not eligible for benefits otherwise payable under this chapter if the employee's use of alcohol or drugs not prescribed by a physician is the major contributing cause of the accident. However, if the employer had

knowledge of and failed to attempt to stop the employee's use of alcohol or drugs, this subsection does not apply.

(5) If a claimant who has reached maximum healing suffers a subsequent nonwork-related injury to the same part of the body, the workers' compensation insurer is not liable for any compensation or medical benefits caused by the subsequent nonwork-related injury.

(6) An employee is not eligible for benefits payable under this chapter unless the entitlement to benefits is established by objective medical findings that contain sufficient factual and historical information concerning the relationship of the worker's condition to the original injury.

(7) As used in this section, "major contributing cause" means a cause that is the leading cause contributing to the result when compared to all other contributing causes.

History: En. Sec. 16, Ch. 96, L. 1915; re-en. Sec. 2911, R.C.M. 1921; re-en. Sec. 2911, R.C.M. 1935; amd. Sec. 1, Ch. 70, L. 1967; amd. Sec. 17, Ch. 23, L. 1975; amd. Sec. 8, Ch. 550, L. 1977; R.C.M. 1947, 92-614(1); amd. Sec. 11, Ch. 464, L. 1987; amd. Sec. 1, Ch. 184, L. 1989; amd. Sec. 26, Ch. 619, L. 1993; amd. Sec. 8, Ch. 243, L. 1995.

39-71-408. Liability as first lien in case of bankruptcy or failure. In case of bankruptcy, insolvency, liquidation, or the failure of an employer or insurer to meet any obligations imposed by this chapter, every liability which may be due under this chapter shall constitute a first lien upon any deposit made by such employer or insurer, and if such deposit shall not be sufficient to secure the payment of such liability in the manner and at the times provided for in this chapter, the deficiency shall be a lien upon all the property of such employer or insurer within this state and shall be prorated with other lienable claims and shall have preference over the claim of any creditor or creditors of such employer or insurer except the claims of other lienors.

History: En. Sec. 17, Ch. 96, L. 1915; re-en. Sec. 2928, R.C.M. 1921; re-en. Sec. 2928, R.C.M. 1935; R.C.M. 1947, 92-802.

Cross-References

Liens generally, Title 71, ch. 3, part 1.

39-71-409. Waivers by employee invalid. No agreement by an employee to waive any rights under this chapter for any injury to be received shall be valid.

History: En. Sec. 17, Ch. 96, L. 1915; re-en. Sec. 2929, R.C.M. 1921; re-en. Sec. 2929, R.C.M. 1935; R.C.M. 1947, 92-803.

39-71-410. Repealed. Sec. 68, Ch. 464, L. 1987.

History: En. Sec. 3, Ch. 96, L. 1915; re-en. Sec. 2842, R.C.M. 1921; re-en. Sec. 2842, R.C.M. 1935; amd. Sec. 1, Ch. 95, L. 1963; amd. Sec. 1, Ch. 145, L. 1971; amd. Sec. 1, Ch. 95, L. 1974; R.C.M. 1947, 92-208; amd. Sec. 60, Ch. 197, L. 1979.

39-71-411. Provisions of chapter exclusive remedy — nonliability of insured employer. For all employments covered under the Workers' Compensation Act or for which an election has been made for coverage under this chapter, the provisions of this chapter are exclusive. Except as provided in part 5 of this chapter for uninsured employers and except as otherwise provided in the Workers' Compensation Act, an employer is not subject to any liability whatever for the death of or personal injury to an employee covered by the Workers' Compensation Act or for any claims for contribution or indemnity asserted by a third person from whom damages are sought on account of such injuries or death. The Workers' Compensation Act binds the employee himself, and in case of death binds his personal representative and all persons having any right or claim to compensation for his injury or death, as well as the employer and the servants and employees of such employer and those conducting his business during liquidation, bankruptcy, or insolvency.

History: En. 92-204.1 by Sec. 1, Ch. 493, L. 1973; amd. Sec. 2, Ch. 550, L. 1977; R.C.M. 1947, 92-204.1(part); amd. Sec. 1, Ch. 329, L. 1979; amd. Sec. 61, Ch. 397, L. 1979.

Cross-References

Liability of railroad or mining company to employee injured by coemployee, 39-2-703, 39-2-704.

39-71-412. Liability of third party other than employer or fellow employee — additional cause of action. The right to compensation and medical benefits as provided by this chapter is not affected by the fact that the injury, occupational disease, or death is caused by the negligence of a third party other than the employer or the servants or employees of the employer. Whenever such event occurs to an employee while performing the duties of his employment and such event is caused by the act or omission of some persons or corporations other than his employer or the servants or employees of his employer, the employee or in case of his death his heirs or personal representative shall, in addition to the right to receive compensation under this chapter, have a right to prosecute any cause of action he may have for damages against such persons or corporations.

History: En. 92-204.1 by Sec. 1, Ch. 493, L. 1973; amd. Sec. 2, Ch. 550, L. 1977; R.C.M. 1947, 92-204.1(part).

39-71-413. Liability of fellow employee for intentional and malicious acts or omissions — additional cause of action. If an employee receives an injury while performing the duties of his employment and the injury or injuries so received by the employee are caused by the intentional and malicious act or omission of a servant or employee of his employer, then the employee or in case of his death his heirs or personal representatives shall, in addition to the right to receive compensation under the Workers' Compensation Act, have a right to prosecute any cause of action he may have for damages against the servants or employees of his employer causing the injury.

History: En. 92-204.1 by Sec. 1, Ch. 493, L. 1973; amd. Sec. 2, Ch. 550, L. 1977; R.C.M. 1947, 92-204.1(part).

Cross-References

Liability of railroad or mining company to employee injured by coemployee, 39-2-703, 39-2-704.

39-71-414. Subrogation. (1) If an action is prosecuted as provided for in 39-71-412 or 39-71-413 and except as otherwise provided in this section, the insurer is entitled to subrogation for all compensation and benefits paid or to be paid under the Workers' Compensation Act. The insurer's right of subrogation is a first lien on the claim, judgment, or recovery.

(2) (a) If the injured employee intends to institute the third-party action, the employee shall give the insurer reasonable notice of the intention to institute the action.

(b) The injured employee may request that the insurer pay a proportionate share of the reasonable cost of the action, including attorney fees.

(c) The insurer may elect not to participate in the cost of the action. If this election is made, the insurer waives 50% of its subrogation rights granted by this section.

(d) If the injured employee or the employee's personal representative institutes the action, the employee is entitled to at least one-third of the amount recovered by judgment or settlement less a proportionate share of reasonable costs, including attorney fees, if the amount of recovery is insufficient to provide the employee with that amount after payment of subrogation.

(3) If an injured employee refuses or fails to institute the third-party action within 1 year from the date of injury, the insurer may institute the action in the name of the employee and for the employee's benefit or that of the employee's personal representative. If the insurer institutes the action, it shall pay to the employee any amount received by judgment or settlement that is in excess of the amounts paid or to be paid under the Workers' Compensation Act after the insurer's reasonable costs, including attorney fees for prosecuting the action, have been deducted from the recovery.

(4) An insurer may enter into compromise agreements in settlement of subrogation rights.

(5) Regardless of whether the amount of compensation and other benefits payable under the Workers' Compensation Act have been fully determined, the insurer and the claimant's heirs or personal representative may stipulate the proportion of the third-party settlement to be allocated under subrogation. Upon review and approval by the department, the agreement constitutes a compromise settlement of the issue of subrogation. A dispute between the insurer and claimant concerning subrogation is a dispute subject to the mediation requirements of 39-71-2401.

(6) (a) The insurer is entitled to full subrogation rights under this section, unless the claimant is able to demonstrate damages in excess of the workers' compensation benefits and the third-party recovery combined. If the insurer is entitled to subrogation under this section, the insurer may subrogate against the entire settlement or award of a third-party claim brought by the claimant or the claimant's personal representative without regard to the nature of the damages.

(b) If a survival action does not exist and the parties reach a settlement of a wrongful death claim without apportionment of damages by a court or jury, the insurer may subrogate against the entire settlement amount, without regard to the parties' apportionment of the damages, unless the insurer is a party to the settlement agreement.

(7) Regardless of whether the amount of compensation and other benefits payable have been fully determined, the insurer and the claimant may stipulate the proportion of the third-party settlement to be allocated under subrogation. Upon review and approval by the department, the agreement constitutes a compromise settlement of the issue of subrogation. A dispute between the insurer and claimant concerning subrogation is a dispute subject to the mediation requirements of 39-71-2401.

History: En. 92-204.2 by Sec. 3, Ch. 550, L. 1977; R.C.M. 1947, 92-204.2; amd. Sec. 12, Ch. 464, L. 1987; amd. Sec. 64, Ch. 613, L. 1989; amd. Sec. 4, Ch. 323, L. 1991; amd. Sec. 2, Ch. 574, L. 1991; amd. Sec. 1, Ch. 459, L. 1993; amd. Sec. 5, Ch. 172, L. 1997.

39-71-415. Procedure for resolving disputes regarding independent contractor status. (1) If an individual, employer, or insurer has a dispute as to whether an individual is an independent contractor or an employee as defined in this chapter, any party may, after mediation pursuant to department rules, petition the workers' compensation court for resolution of the dispute.

(2) If a claimant and insurer have a dispute over benefits and the dispute involves an issue of whether the claimant is an independent contractor or employee as defined in this chapter, and after mediating pursuant to department rule, either party may petition the workers' compensation judge for resolution of the dispute in accordance with 39-71-2905.

(3) Notwithstanding the provisions of subsection (1), an individual may apply to the department for an exemption from the Workers' Compensation Act in accordance with 39-71-401.

History: En. Sec. 7, Ch. 314, L. 1987; amd. Sec. 64, Ch. 613, L. 1989; amd. Sec. 15, Ch. 442, L. 1999.

Compiler's Comments

1999 Amendment: Chapter 442 in (1) after "may" inserted "after mediation pursuant to department rules" and after "petition" substituted "the workers' compensation court for resolution of the dispute" for "a department of labor and industry appeals referee for resolution of the dispute in accordance with 39-51-1109 and may appeal from a decision of the appeals referee in the same manner as prescribed in 39-51-2403 and 39-51-2404"; and in (2) after "chapter" inserted "and after mediating pursuant to department rule". Amendment effective April 23, 1999.

Retroactive Applicability: Section 31(1), Ch. 442, L. 1999, provided that this section applies retroactively, within the meaning of 1-2-109, to claims for injuries occurring before April 23, 1999, unless a party elects, after notification by the department of labor and industry, to remain in the contested case process.

39-71-416. Benefit reduction for third-party recovery. (1) If an employee is injured or dies and obtains a third-party recovery, settlement, or award, an insurer may reduce by 30% the benefits paid or that are required to be paid to the employee or beneficiary pursuant to chapter 71 or 72 as a result of the injury or death. The reduction applies to any recovery, settlement, or award regardless of the form of action or the nature of damages. The total of any reductions may not exceed 30% of any third-party recovery, settlement, or award.

(2) This section does not limit or prohibit an insurer's right to pursue subrogation pursuant to 39-71-414.

(3) If an insurer is entitled to subrogation pursuant to 39-71-414, the amount subrogated must be offset by any reduction in benefits pursuant to subsection (1).

History: En. Sec. 2, Ch. 243, L. 1995.

39-71-417 through 39-71-420 reserved.

39-71-421. Financial incentives to institute safety programs. Insurers may provide financial incentives to an employer who implements a formal safety program. An insurer may provide to an employer a premium discount that reflects the degree of risk diminished by the implemented safety program.

History: En. Sec. 9, Ch. 464, L. 1987; amd. Sec. 21, Ch. 613, L. 1989.

39-71-422 through 39-71-425 reserved.

39-71-426. Reciprocal agreements with Canadian provinces — exception. (1) Subject to the conditions provided in 39-71-427 and subsection (2) of this section, the governor may enter into agreements with duly authorized representatives of any Canadian province, granting reciprocal application of the workers' compensation laws of this state to Montana employers and workers if they are temporarily engaged in work in that province.

(2) Subsection (1) does not apply to the construction industry as defined in 39-71-116.

History: En. Sec. 1, Ch. 388, L. 1989; amd. Sec. 5, Ch. 480, L. 1991.

39-71-427. Conditions for reciprocal agreements. An agreement entered into under 39-71-426 must contain provisions that extend to Montana employers and workers the same privileges, benefits, and exemptions from payment of taxes and premiums for workers' compensation coverage as provided under the laws of this state. The agreement must, in the judgment of the governor, be fair and equitable and in the best interests of the citizens of this state.

History: En. Sec. 2, Ch. 388, L. 1989.

39-71-428. Denial of reciprocity. Beginning September 30, 1989, the workers' compensation laws of this state apply to any employer or worker of a Canadian province temporarily engaged in work within this state if the province has not entered into an agreement as provided for in 39-71-426.

History: En. Sec. 3, Ch. 388, L. 1989.

39-71-429 and 39-71-430 reserved.

39-71-431. Repealed. Sec. 13, Ch. 310, L. 1997.

History: En. Sec. 12, Ch. 613, L. 1989; amd. Sec. 5, Ch. 323, L. 1991.

39-71-432. Definitions. As used in 39-71-433, the following definitions apply:

(1) "Business entity" means a business enterprise owned by a single person, corporation, organization, business trust, trust, partnership, limited liability company, limited liability partnership, joint venture, association, or other business entity.

(2) "Group" means two or more business entities that join together to purchase individual workers' compensation insurance policies covering each business entity that is part of a group.

History: En. Sec. 20, Ch. 619, L. 1993; amd. Sec. 7, Ch. 516, L. 1995; amd. Sec. 6, Ch. 172, L. 1997; amd. Sec. 6, Ch. 377, L. 1999.

Compiler's Comments

1999 Amendment: Chapter 377 in definition of group after "join together" deleted "with the approval of the department"; and made minor changes in style. Amendment effective July 1, 1999.

39-71-433. Group purchase of workers' compensation insurance. (1) Two or more business entities may join together to form a group to purchase individual workers' compensation insurance policies covering each member of the group.

(2) A group formed under this section may purchase individual workers' compensation insurance policies covering each member of the group from any insurer authorized to write workers' compensation insurance in this state, except that the state fund, as defined in 39-71-2312, has the right to refuse coverage of a group and its plan of operation but may not refuse coverage to an individual employer. Under an individual policy, the group is entitled to a premium or volume discount that would be applicable to a policy of the combined premium amount of the individual policies.

(3) A group shall apportion any discount or policyholder dividend received on workers' compensation insurance coverage among the members of the group according to a formula adopted in the plan of operation for the group.

(4) A group shall adopt a plan of operation that must include the composition and selection of a governing board, the methods for administering the group, the eligibility requirements to join the group, and guidelines for the workers' compensation insurance coverage obtained by the group, including the payment of premiums, the distribution of discounts, and the method for providing risk management.

History: En. Sec. 21, Ch. 619, L. 1993; amd. Sec. 8, Ch. 516, L. 1995; amd. Sec. 5, Ch. 310, L. 1997.

39-71-434. Deductible insurance policy provision for medical benefits. (1) In order to lower the amount an employer is required to pay to obtain workers' compensation insurance coverage under this chapter, a workers' compensation policy issued by the state compensation insurance fund under plan No. 3 or by a private insurer under plan No. 2 must offer a deductible for the medical, hospital, and related services allowed under 39-71-704. The medical deductible must be offered in amounts of at least $500.

(2) If the insured employer chooses to accept a medical deductible, the insured employer is liable for the amount of the deductible for the medical benefits paid for each otherwise compensable claim of work injury suffered by an employee.

(3) The insured employer shall contract with the insurer to have the insurer pay the entire cost of the covered medical benefits directly to the provider of medical or related services and then seek reimbursement from the insured employer for the deductible amount. The insurer is entitled to reimbursement only for medical, hospital, and related services allowed under 39-71-704, up to the amount of the deductible.

(4) If an insured employer who has contracted with an insurer for a medical deductible does not pay the medical deductible amount to the insurer through reimbursement, the amount paid by the insurer on the claim may be included as benefits paid in a determination of the insured employer's rate.

(5) If an insured employer chooses to accept a medical deductible, then for purposes of computing rates and rating plans, all medical losses incurred must be reported to the insurer without regard to the application of any medical deductible regardless of whether the employer or the insurer pays the losses.

History: En. Sec. 1, Ch. 641, L. 1989; amd. Sec. 1, Ch. 666, L. 1991; amd. Sec. 1, Ch. 248, L. 1993.

39-71-435. Workers' compensation and employers' liability insurance — optional deductibles. (1) An insurer issuing a workers' compensation or an employer's liability insurance policy may offer to the policyholder, as part of the policy or by endorsement, optional deductibles for benefits payable under the policy consistent with the standards contained in subsection (3).

(2) The advisory organization designated under 33-16-1023 may develop and file a deductible plan or plans on behalf of its members consistent with the standards contained in subsection (3).

(3) The commissioner of insurance shall approve a deductible plan that is in accordance with the following standards:

(a) Claimants' rights are properly protected and claimants' benefits are paid without regard to the deductible.

(b) Premium reductions reflect the type and level of the deductible, consistent with accepted actuarial standards.

(c) Premium reductions for deductibles are determined before application of any experience modification, premium surcharge, or premium discount.

(d) Recognition is given to policyholder characteristics, including but not limited to size, financial capabilities, nature of activities, and number of employees.

(e) The policyholder is liable to the insurer for the deductible amount in regard to benefits paid for compensable claims.

(f) The insurer pays all of the deductible amount applicable to a compensable claim to the person or provider entitled to benefits and then seeks reimbursement from the policyholder for the applicable deductible amount.

(g) Failure by the policyholder to reimburse deductible amounts to the insurer is treated under the policy as nonpayment of premium.

(h) Losses subject to the deductible must be reported and recorded as losses for purposes of calculating rates for a policyholder on the same basis as losses under policies providing first dollar coverage.

(4) The state compensation insurance fund, plan No. 3, may adopt the plan filed by the designated advisory organization or adopt an optional deductible plan that meets the requirements of this section.

(5) For purposes of 39-71-201, liability for assessments must be ascertained based on premiums collected, in the case of policies written under plan No. 2, or on the assessment levied, in the case of policies written under plan No. 3, for which the policyholder would have been obligated without the deductible. For all other taxes and assessments based on premium, the amount of premium or assessment must be determined after application of the deductible.

History: En. Sec. 8, Ch. 619, L. 1993; amd. Sec. 24, Ch. 186, L. 1995.

Part 5

Uninsured Employers

Part Cross-References

Definitions, 39-71-116.
Employer defined, 39-71-117.
Employee defined, 39-71-118.
Injury defined, 39-71-119.

39-71-501. Definition of uninsured employer. For the purposes of 39-71-501, 39-71-503 through 39-71-511, and 39-71-515 through 39-71-520, "uninsured employer" means an employer who has not properly complied with the provisions of 39-71-401.

History: **En. 92-212 by Sec. 4, Ch. 550, L. 1977; R.C.M. 1947, 92-212(part); amd. Sec. 62, Ch. 397, L. 1979; amd. Sec. 179, Ch. 42, L. 1997; amd. Sec. 7, Ch. 377, L. 1999.**

Compiler's Comments

1999 Amendment: Chapter 377 near beginning substituted "39-71-501, 39-71-503 through 39-71-511" for "39-71-501 through 39-71-511"; and made minor changes in style. Amendment effective July 1, 1999.

39-71-502. Repealed. Sec. 22, Ch. 377, L. 1999.

History: **En. 92-212 by Sec. 4, Ch. 550, L. 1977; R.C.M. 1947, 92-212(part); amd. Sec. 13, Ch. 464, L. 1987; amd. Sec. 9, Ch. 276, L. 1997.**

39-71-503. Uninsured employers' fund — purpose and administration of fund — appropriation. (1) There is created an uninsured employers' fund in the state special revenue account to pay:

(a) to an injured employee of an uninsured employer the same benefits the employee would have received if the employer had been properly enrolled under compensation plan No. 1, 2, or 3, except as provided in subsection (3);

(b) the costs of investigating and prosecuting workers' compensation fraud under 2-15-2015; and

(c) the expenses incurred by the department in administering the uninsured employers' fund.

(2) The department may refer to the workers' compensation fraud office, established in 2-15-2015, cases involving:

(a) false or fraudulent claims for benefits; and

(b) criminal violations of 45-7-501.

(3) Surpluses and reserves may not be kept for the fund. The department shall make payments that it considers appropriate as funds become available from time to time. The payment of weekly disability benefits takes precedence over the payment of medical benefits. Lump-sum payments of future projected benefits, including impairment awards, may not be made from the fund. The board of investments shall invest the money of the fund, and the investment income must be deposited in the fund.

(4) The amounts necessary for the payment of benefits from this fund are statutorily appropriated, as provided in 17-7-502, from this fund.

History: **En. 92-212 by Sec. 4, Ch. 550, L. 1977; R.C.M. 1947, 92-212(part); amd. Sec. 14, Ch. 464, L. 1987; amd. Sec. 64, Ch. 613, L. 1989; amd. Sec. 5, Ch. 555, L. 1993; amd. Sec. 9, Ch. 516, L. 1995; amd. Sec. 6, Ch. 310, L. 1997; amd. Sec. 35, Ch. 422, L. 1997; amd. Sec. 8, Ch. 377, L. 1999; amd. Sec. 18, Ch. 389, L. 1999.**

Compiler's Comments

1999 Amendments — Composite Section: Chapter 377 deleted former (1) that read: "(1) The department shall administer the fund and shall pay from it all expenses of administering the fund, all loss adjustment expenses for claims of injured employees of uninsured employers, and all proper benefits to injured employees of underinsured and uninsured employers"; inserted (1) establishing uninsured employers' fund as state special revenue account; inserted (2) authorizing department to refer certain cases to workers' compensation fraud office; and made minor changes in style. Amendment effective July 1, 1999.

Chapter 389 in (1) near beginning before "fund" inserted "uninsured employers'". Amendment effective July 1, 1999. The amendment by Ch. 377 rendered the amendment by Ch. 389 void.

Cross-References

Investments, Title 17, ch. 6, part 2.

39-71-504. Funding of fund — option for agreement between department and injured employee. The fund is funded in the following manner:

(1) (a) The department may require that the uninsured employer pay to the fund a penalty of either up to double the premium amount the employer would have paid on the payroll of the employer's workers in this state if the employer had been enrolled with compensation plan No. 3 or $200, whichever is greater. In determining the premium amount for the calculation of the penalty under this subsection, the department shall make an assessment based on how much premium would have been paid on the employer's past 3-year payroll for periods within the 3 years when the employer was uninsured.

(b) The fund shall collect from an uninsured employer an amount equal to all benefits paid or to be paid from the fund to an injured employee of the uninsured employer.

(2) The department may enter into an agreement with the injured employee or the employee's beneficiaries to assign to the employee or the beneficiaries all or part of the funds collected by the department from the uninsured employer pursuant to subsection (1)(b).

History: **En. 92-212 by Sec. 4, Ch. 550, L. 1977; R.C.M. 1947, 92-212(2); amd. Sec. 5, Ch. 103, L. 1979; amd. Sec. 1, Ch. 601, L. 1985; amd. Sec. 64, Ch. 613, L. 1989; amd. Sec. 1, Ch. 661, L. 1991; amd. Sec. 10, Ch. 516, L. 1995; amd. Sec. 3, Ch. 284, L. 1997; amd. Sec. 7, Ch. 310, L. 1997.**

39-71-505. Applicability of other provisions of chapter to fund. All appropriate provisions in the Workers' Compensation Act apply to the fund in the same manner as they apply to compensation plans No. 1, 2, and 3.

History: **En. 92-212 by Sec. 4, Ch. 550, L. 1977; R.C.M. 1947, 92-212(5).**

Cross-References

Compensation plan No. 1, Title 39, ch. 71, part 21.

Compensation plan No. 2, Title 39, ch. 71, part 22.

Compensation plan No. 3, Title 39, ch. 71, part 23.

39-71-506. Lien for payment of unpaid penalties and claims — levy and execution. (1) If, upon demand of the department, an uninsured employer refuses to make the payments to the fund that are provided for in subsections (1) and (2) of 39-71-504, the unpaid penalties and claims have the effect of a judgment against the employer at the time the payments become due. After the due process requirements of 39-71-2401(2) and (3) are satisfied, the department may issue a certificate setting forth the amount of payment due and direct the clerk of the district court of any county in the state to enter the certificate as a judgment on the docket pursuant to 25-9-301. From the time the judgment is docketed, it becomes a lien upon all real property of the employer. After satisfying any due process requirements, the department may enforce the judgment at any time within 10 years of creation of the lien.

(2) The department may settle through compromise with an uninsured employer the amount due the fund under 39-71-504.

History: **En. 92-212 by Sec. 4, Ch. 550, L. 1977; R.C.M. 1947, 92-212(3); amd. Sec. 63, Ch. 397, L. 1979; amd. Sec. 64, Ch. 613, L. 1989; amd. Sec. 6, Ch. 555, L. 1993.**

39-71-507. Department to order uninsured employer to cease operations — noncompliance with order a misdemeanor — coordination of remedies. (1) When the department discovers an uninsured employer, it shall order the employer to cease operations until the employer has elected to be bound by a compensation plan.

(2) When the department discovers a person, business, or other entity functioning as a prime contractor that has subcontracted for the services of an uninsured employer, it may order the person, business, or other entity functioning as a prime contractor to cause all operations performed by the uninsured employer to cease at worksites controlled by the prime contractor until the uninsured employer has elected to be bound by a compensation plan. If after 3 business days following the order by the department the person, business, or other entity functioning as a prime contractor has not complied with the order, the department may order the prime contractor to cease all operations at the affected worksites.

(3) An employer who does not comply with the department's order to cease operations is guilty of a misdemeanor. Each day of violation is a separate offense. The county attorney may prosecute a criminal action under this subsection in the county in which the violation occurs. Prosecution under this subsection does not bar the department from enforcing its order by a civil action.

(4) A person, business, or other entity functioning as a prime contractor that does not comply with the department's order to cease all operations is guilty of a misdemeanor. Each day of violation is a separate offense. The county attorney may prosecute a criminal action under this subsection in the county in which the violation occurs. Prosecution under this subsection does not bar the department from enforcing its order by a civil action. In addition, the department may assess a penalty against the person, business, or other entity functioning as a prime contractor of not more than $1,000 per day for each day of violation.

(5) The department may institute and maintain in the name of the state, through the attorney general or the county attorney of the county in which the violation occurs, an action for an injunction order or other civil remedy in district court to enforce its order to cease operations.

(6) The remedies provided in 39-71-506 and subsections (3) through (5) of this section are not mutually exclusive and may be pursued concurrently.

History: En. 92-212 by Sec. 4, Ch. 550, L. 1977; R.C.M. 1947, 92-212(6); amd. Sec. 1, Ch. 586, L. 1987; amd. Sec. 64, Ch. 613, L. 1989; amd. Sec. 11, Ch. 516, L. 1995.

Cross-References

Misdemeanor defined, 45-2-101.

Penalty when no penalty specified, 46-18-212.

39-71-508. Coordination of remedies. An employee who suffers an injury arising out of and in the course of employment while working for an uninsured employer as defined in 39-71-501 or an employee's beneficiaries in injuries resulting in death may pursue all remedies concurrently, including but not limited to:

(1) a claim for benefits from the uninsured employers' fund;

(2) a damage action against the employer in accordance with 39-71-509;

(3) an independent action against an employer as provided in 39-71-515; or

(4) any other civil remedy provided by law.

History: En. 92-213 by Sec. 5, Ch. 550, L. 1977; R.C.M. 1947, 92-213(part); amd. Sec. 2, Ch. 601, L. 1985.

39-71-509. Action against uninsured employer — limitation of employer's defenses. If an injured employee or the employee's beneficiaries bring an action to recover damages for personal injuries sustained or for death resulting from personal injuries so sustained, it is not a defense for the employer that the:

(1) employee was negligent unless such negligence was willful;

(2) injury was caused by the negligence of a fellow employee; or

(3) employee had assumed the risks inherent in, incident to, or arising out of his employment or arising from the failure of the employer to provide and maintain a reasonably safe place to work or reasonably safe tools or appliances.

History: En. 92-213 by Sec. 5, Ch. 550, L. 1977; R.C.M. 1947, 92-213(part); amd. Sec. 5, Ch. 601, L. 1985.

39-71-510. Limitation on benefit entitlement under fund. Notwithstanding the provisions of 39-71-407 and 39-71-503, injured employees or an employee's beneficiaries who pursue a claim for benefits from the uninsured employers' fund are not granted an entitlement by this state for full workers' compensation benefits from the fund. Benefits from the fund must be paid in accordance with the sums in the fund. If the department determines at any time that the sums in the fund are not adequate to fully pay all claims, the department may make appropriate proportionate reductions in benefits to all claimants. The reductions do not entitle claimants to retroactive reimbursements in the future.

History: En. 92-213 by Sec. 5, Ch. 550, L. 1977; R.C.M. 1947, 92-213(2); amd. Sec. 64, Ch. 397, L. 1979; amd. Sec. 4, Ch. 601, L. 1985; amd. Sec. 64, Ch. 613, L. 1989; amd. Sec. 9, Ch. 377, L. 1999.

Compiler's Comments

1999 Amendment: Chapter 377 near beginning of first sentence deleted "39-71-502"; and made minor changes in style. Amendment effective July 1, 1999.

39-71-511. Setoffs to claim against fund. A claim for benefits from the uninsured employer's fund must be discharged, finally or periodically, to the extent that an employee or the employee's beneficiaries receive actual monetary compensation by judgment or settlement from the uninsured employer, a third party who shares liability as defined in 39-71-412, or a fellow employee who shares liability as defined in 39-71-413.

History: En. Sec. 3, Ch. 601, L. 1985.

39-71-512 through 39-71-514 reserved.

39-71-515. Independent cause of action. (1) An injured employee or the employee's beneficiaries have an independent cause of action against an uninsured employer for failure to be enrolled in a compensation plan as required by this chapter.

(2) In such an action, prima facie liability of the uninsured employer exists if the claimant proves, by a preponderance of the evidence, that:

(a) the employer was required by law to be enrolled under compensation plan No. 1, 2, or 3 with respect to the claimant; and

(b) the employer was not so enrolled on the date of the injury or death.

(3) It is not a defense to such an action that the employee had knowledge of or consented to the employer's failure to carry insurance or that the employee was negligent in permitting such failure to exist.

(4) The amount of recoverable damages in such an action is the amount of compensation that the employee would have received had the employer been properly enrolled under compensation plan No. 1, 2, or 3.

(5) A plaintiff who prevails in an action brought under this section is entitled to recover reasonable costs and attorney fees incurred in the action, in addition to his damages.

History: En. Sec. 6, Ch. 601, L. 1985.

Cross-References

Costs and attorney fees, Title 25, ch. 10.

39-71-516. District court venue and jurisdiction for independent cause of action. An injured employee or an employee's beneficiaries pursuing an independent cause of action pursuant to 39-71-515 shall bring the action in the district court in the district where the claimant resides or where the alleged violation occurred. The court may grant interim relief that it considers appropriate, including but not limited to injunctive relief, attachment, or receivership. The court may request the workers' compensation judge to determine the amount of recoverable damages due to the employee.

History: En. Sec. 7, Ch. 601, L. 1985; amd. Sec. 12, Ch. 516, L. 1995.

Cross-References

Venue generally, Title 25, ch. 2.
Attachment, Title 27, ch. 18.
Injunctions, Title 27, ch. 19.
Receivership, Title 27, ch. 20.

39-71-517. Requirement to serve papers. In pursuing remedies under 39-71-501, 39-71-503 through 39-71-511, and 39-71-515 through 39-71-520, an injured employee or the employee's beneficiaries shall serve all pleadings and all other litigation papers on the department and the uninsured employer, regardless of whether the department or the uninsured employer is a party to the particular action to which the papers relate.

History: En. Sec. 8, Ch. 601, L. 1985; amd. Sec. 64, Ch. 613, L. 1989; amd. Sec. 180, Ch. 42, L. 1997; amd. Sec. 10, Ch. 377, L. 1999.

Compiler's Comments

1999 Amendment: Chapter 377 near beginning substituted "39-71-501, 39-71-503 through 39-71-511" for "39-71-501 through 39-71-511"; and made minor changes in style. Amendment effective July 1, 1999.

39-71-518. Setoffs against remaining liability. Any actual monetary compensation received by judgment or settlement by the injured employee or the employee's beneficiaries under 39-71-509 or 39-71-515 may be offset by the uninsured employer against his remaining liability under those sections.

History: En. Sec. 9, Ch. 601, L. 1985.

39-71-519. Settlement. The department, the uninsured employer, the injured employee or the employee's beneficiaries, a third party who shares liability as defined in 39-71-412, or a fellow employee who shares liability as defined in 39-71-413 may enter into a settlement agreement to finally settle the rights and liabilities under 39-71-501, 39-71-503 through 39-71-511, and 39-71-515 through 39-71-520 of any or all of the parties. The settlement is subject to department approval in accordance with 39-71-741.

History: En. Sec. 10, Ch. 601, L. 1985; amd. Sec. 64, Ch. 613, L. 1989; amd. Sec. 181, Ch. 42, L. 1997; amd. Sec. 11, Ch. 377, L. 1999.

Compiler's Comments

1999 Amendment: Chapter 377 near end of first sentence substituted "39-71-501, 39-71-503 through 39-71-511" for "39-71-501 through 39-71-511"; and made minor changes in style. Amendment effective July 1, 1999.

39-71-520. Time limit to appeal. A dispute concerning uninsured employers' fund benefits must be appealed to mediation within 90 days from the date of the determination or the determination is considered final.

History: En. Sec. 19, Ch. 555, L. 1993.

39-71-521 through 39-71-524 reserved.

39-71-525. Confidentiality of records — exception for use by public employees. Information obtained from any individual under this part is confidential and may not be disclosed, sold, or opened to public inspection except to department employees when necessary to allow them to perform their public duties under Title 39, chapters 71 and 72, or to provide relevant and necessary information to other public entities or pursuant to a subpoena issued upon a showing of compelling state interest.

History: En. Sec. 21, Ch. 377, L. 1999.

Compiler's Comments

Effective Date: This section is effective July 1, 1999.

39-71-526 through 39-71-530 reserved.

39-71-531 through 39-71-534. Repealed. Sec. 9, Ch. 172, L. 1997; Sec. 13, Ch. 310, L. 1997.

Compiler's Comments

Histories of Repealed Sections:

39-71-531. En. Sec. 1, Ch. 467, L. 1993.

39-71-532. En. Sec. 2, Ch. 467, L. 1993; amd. Sec. 46, Ch. 18, L. 1995.

39-71-533. En. Sec. 3, Ch. 467, L. 1993.

39-71-534. En. Sec. 4, Ch. 467, L. 1993.

Part 6
Claims for Benefits

Part Cross-References

Definitions, 39-71-116.

Employer defined, 39-71-117.

Employee defined, 39-71-118.

Injury defined, 39-71-119.

39-71-601. Statute of limitation on presentment of claim — waiver. (1) In case of personal injury or death, all claims must be forever barred unless signed by the claimant or the claimant's representative and presented in writing to the employer, the insurer, or the department, as the case may be, within 12 months from the date of the happening of the accident, either by the claimant or someone legally authorized to act on the claimant's behalf.

(2) The insurer may waive the time requirement up to an additional 24 months upon a reasonable showing by the claimant of:

(a) lack of knowledge of disability;

(b) latent injury; or

(c) equitable estoppel.

(3) Any dispute regarding the statute of limitations for filing time is considered a dispute that, after mediation pursuant to department rules, is subject to jurisdiction of the workers' compensation court.

History: En. Sec. 10, Ch. 96, L. 1915; amd. Sec. 3, Ch. 100, L. 1919; re-en. Sec. 2899, R.C.M. 1921; amd. Sec. 1, Ch. 34, L. 1935; re-en. Sec. 2899, R.C.M. 1935; amd. Sec. 1, Ch. 264, L. 1973; R.C.M. 1947, 92-601; amd. Sec. 1, Ch. 254, L. 1989; amd. Sec. 64, Ch. 613, L. 1989; amd. Sec. 24, Ch. 619, L. 1993; amd. Sec. 16, Ch. 442, L. 1999.

Compiler's Comments

1999 Amendment: Chapter 442 near beginning of (2) substituted "insurer" for "department"; and inserted (3) concerning statute of limitations dispute. Amendment effective April 23, 1999.

Retroactive Applicability: Section 31(1), Ch. 442, L. 1999, provided that this section applies retroactively, within the meaning of 1-2-109, to claims for injuries occurring before April 23, 1999, unless a party elects, after notification by the department of labor and industry, to remain in the contested case process.

39-71-602. Statute of limitation not to apply during minority or mental incompetency unless guardian appointed. No limitation of time as provided in 39-71-601 or in this chapter, known as the Workers' Compensation Act, shall run as against any injured worker who is mentally incompetent and without a guardian or an injured minor under 18 years of age who may be without a parent or guardian. A guardian in either case may be appointed by any court of competent jurisdiction, in which event the period of limitations as provided for in 39-71-601 shall begin to run on the date of appointment of such guardian or when such minor arrives at 18 years of age, whichever date is earlier.

History: En. Sec. 10, Ch. 96, L. 1915; re-en. Sec. 2900, R.C.M. 1921; amd. Sec. 9, Ch. 121, L. 1925; re-en. Sec. 2900, R.C.M. 1935; amd. Sec. 1, Ch. 79, L. 1939; amd. Sec. 5, Ch. 235, L. 1947; R.C.M. 1947, 92-602; amd. Sec. 65, Ch. 397, L. 1979.

Cross-References

Person under disability — statute of limitations extended, 27-2-401.

Persons under disability — guardianship and conservatorship, Title 72, ch. 5.

39-71-603. Notice of injuries other than death to be submitted within thirty days. (1) A claim to recover benefits under the Workers' Compensation Act for injuries not resulting in death may not be considered compensable unless, within 30 days after the occurrence of the accident that is claimed to have caused the injury, notice of the time and place where the accident occurred and the nature of the injury is given to the employer or the employer's insurer by the injured employee or someone on the employee's behalf. Actual knowledge of the accident and injury on the part of the employer or the employer's managing agent or superintendent in charge of the work in which the injured employee was engaged at the time of the injury is equivalent to notice.

(2) If a sole proprietor, partner, manager of a manager-managed limited liability company, member of a member-managed limited liability company, or corporate officer covered under this chapter is injured in an accident, the sole proprietor, partner, manager, member, or corporate officer or an appointed designee shall, within 30 days, notify the insurer of the time and location of the accident and the nature of the injury.

History: En. Sec. 17, Ch. 96, L. 1915; re-en. Sec. 2933, R.C.M. 1921; amd. Sec. 7, Ch. 177, L. 1929; re-en. Sec. 2933, R.C.M. 1935; amd. Sec. 9, Ch. 234, L. 1957; R.C.M. 1947, 92-807; amd. Sec. 6, Ch. 103, L. 1979; amd. Sec. 66, Ch. 397, L. 1979; amd. Sec. 1, Ch. 352, L. 1987; amd. Sec. 9, Ch. 243, L. 1995.

39-71-604. Application for compensation. (1) If a worker is entitled to benefits under this chapter, the worker shall file with the insurer all reasonable information needed by the insurer to determine compensability. It is the duty of the worker's attending physician to lend all necessary assistance in making application for compensation and such proof of other matters as may be required by the rules of the department without charge to the worker. The filing of forms or other documentation by the attending physician does not constitute a claim for compensation.

(2) If death results from an injury, the parties entitled to compensation or someone in their behalf shall file a claim with the insurer. The claim must be accompanied with proof of death and proof of relationship, showing the parties entitled to compensation, certificate of the attending physician, if any, and such other proof as may be required by the department.

History: (1)En. Sec. 40, Ch. 96, L. 1915; re-en. Sec. 3006, R.C.M. 1921; re-en. Sec. 3006, R.C.M. 1935; amd. Sec. 6, Ch. 213, L. 1945; amd. Sec. 78, Ch. 23, L. 1975; Sec. 92-1118, R.C.M. 1947; (2)En. Sec. 40, Ch. 96, L. 1915; re-en. Sec. 3008, R.C.M. 1921; re-en. Sec. 3008, R.C.M. 1935; amd. Sec. 80, Ch. 23, L. 1975; Sec. 92-1120, R.C.M. 1947; R.C.M. 1947, 92-1118, 92-1120; amd. Sec. 7, Ch. 103, L. 1979; amd. Sec. 2, Ch. 525, L. 1987; amd. Sec. 22, Ch. 613, L. 1989; amd. Sec. 4, Ch. 558, L. 1991.

39-71-605. Examination of employee by physician — effect of refusal to submit to examination — report and testimony of physician — cost. (1) (a) Whenever in case of injury the right to compensation under this chapter would exist in favor of any employee, the employee shall, upon the written request of the insurer, submit from time to time to examination by a physician, psychologist, or panel that must be provided and paid for by the insurer and shall likewise submit to examination from time to time by any physician, psychologist, or panel selected by the department or as ordered by the workers' compensation judge.

(b) The request or order for an examination must fix a time and place for the examination, with regard for the employee's convenience, physical condition, and ability to attend at the time and place that is as close to the employee's residence as is practical. An examination that is conducted by a physician, psychologist, or panel licensed in another state is not precluded under this section. The employee is entitled to have a physician present at any examination. If the employee, after written request, fails or refuses to submit to the examination or in any way obstructs the examination, the employee's right to compensation must be suspended and is subject to the provisions of 39-71-607. Any physician, psychologist, or panel employed by the insurer or the department who makes or is present at any examination may be required to testify as to the results of the examination.

(2) In the event of a dispute concerning the physical condition of a claimant or the cause or causes of the injury or disability, if any, the department or the workers' compensation judge, at the request of the claimant or insurer, as the case may be, shall require the claimant to submit to an examination as it considers desirable by a physician, psychologist, or panel within the state or elsewhere that has had adequate and substantial experience in the particular field of medicine concerned with the matters presented by the dispute. The physician, psychologist, or panel making the examination shall file a written report of findings with the claimant and insurer for their use in the determination of the controversy involved. The requesting party shall pay the physician, psychologist, or panel for the examination.

(3) As used in this section, a panel includes a practitioner having substantial experience in the field of medicine concerned with the matters presented by the dispute and whose licensure would qualify the practitioner to

act as a treating physician, as defined in 39-71-116, and may include a psychologist.

(4) A claimant is required, upon a written request of an insurer, to submit to a functional capacities evaluation conducted by a licensed physical or occupational therapist.

(5) This section does not apply to impairment evaluations provided for in 39-71-711.

History: (1)En. Sec. 13, Ch. 96, L. 1915; re-en. Sec. 2906, R.C.M. 1921; re-en. Sec. 2906, R.C.M. 1935; amd. Sec. 16, Ch. 23, L. 1975; Sec. 92-609, R.C.M. 1947; (2)En. Sec. 10, Ch. 234, L. 1957; amd. Sec. 27, Ch. 23, L. 1975; Sec. 92-814.1, R.C.M. 1947; R.C.M. 1947, 92-609, 92-814.1; amd. Sec. 1, Ch. 422, L. 1985; amd. Sec. 15, Ch. 464, L. 1987; amd. Sec. 64, Ch. 613, L. 1989; amd. Sec. 5, Ch. 558, L. 1991; amd. Sec. 3, Ch. 619, L. 1993; amd. Sec. 10, Ch. 276, L. 1997; amd. Sec. 1, Ch. 218, L. 1999; amd. Sec. 12, Ch. 377, L. 1999.

Compiler's Comments

1999 Amendments — Composite Section: Chapter 218 in (4) inserted reference to occupational therapist. Amendment effective March 30, 1999.

Chapter 377 in (3) inserted "practitioner having substantial experience in the field of medicine concerned with the matters presented by the dispute and whose licensure would qualify the practitioner to act as a". Amendment effective July 1, 1999.

Cross-References

Procedural rules on physical and mental exams, Rule 35, M.R.Civ.P. (see Title 25, ch. 20).

39-71-606. Insurer to accept or deny claim within thirty days of receipt — notice of benefits and entitlements to claimants — notice of denial — notice of reopening — notice to employer. (1) Each insurer under any plan for the payment of workers' compensation benefits shall, within 30 days of receipt of a claim for compensation signed by the claimant or the claimant's representative, either accept or deny the claim and, if denied, shall inform the claimant and the department in writing of the denial.

(2) The department shall make available to insurers for distribution to claimants sufficient copies of a document describing current benefits and entitlements available under Title 39, chapter 71. Upon receipt of a claim, each insurer shall promptly notify the claimant in writing of potential benefits and entitlements available by providing the claimant a copy of the document prepared by the department.

(3) Each insurer under plan No. 2 or No. 3 for the payment of workers' compensation benefits shall notify the employer of the reopening of the claim within 14 days of the reopening of a claim for the purpose of paying compensation benefits.

(4) Upon the request of an employer that it insures, an insurer shall notify the employer of all compensation benefits that are ongoing and are being charged against that employer's account.

(5) Failure of an insurer to comply with the time limitations required in this section does not constitute an acceptance of a claim as a matter of law. However, an insurer who fails to comply with 39-71-608 or this section may be assessed a penalty under 39-71-2907 if a claim is determined to be compensable by the workers' compensation court.

History: En. Sec. 1, Ch. 477, L. 1973; amd. Sec. 1, Ch. 173, L. 1974; R.C.M. 1947, 92-615(part); amd. Sec. 1, Ch. 122, L. 1981; amd. Sec. 64, Ch. 613, L. 1989; amd. Sec. 22, Ch. 619, L. 1993; amd. Sec. 13, Ch. 630, L. 1993; amd. Sec. 11, Ch. 276, L. 1997.

39-71-607. Suspension of payments by insurer pending receipt of medical information. Under rules adopted by the department, an insurer may suspend compensation payments pending the receipt of medical information when an injured worker unreasonably fails to keep scheduled medical appointments. If, after a medical examination, the injured worker is released to return to work, the worker forfeits the right to any suspended benefits.

History: En. Sec. 2, Ch. 477, L. 1973; amd. Sec. 2, Ch. 173, L. 1974; R.C.M. 1947, 92-616(part); amd. Sec. 64, Ch. 613, L. 1989; amd. Sec. 4, Ch. 619, L. 1993.

39-71-608. Payments within thirty days by insurer without admission of liability or waiver of defense authorized — notice. An insurer may, after written notice to the claimant and the department, make payment of compensation benefits within 30 days of receipt of a claim for compensation without such payments being construed as an admission of liability or a waiver of any right of defense.

History: En. Sec. 1, Ch. 477, L. 1973; amd. Sec. 1, Ch. 173, L. 1974; R.C.M. 1947, 92-615(part); amd. Sec. 64, Ch. 613, L. 1989.

39-71-609. Denial of claim after payments made or termination of all benefits or reduction to partial benefits by insurer — fourteen days' notice required — exception. (1) Except as provided in subsection (2), if an insurer determines to deny a claim on which payments have been made under 39-71-608 during a time of further investigation or, after a claim has been accepted, terminates all biweekly compensation benefits, it may do so only after 14 days' written notice to the claimant, the claimant's authorized representative, if any, and the department. For injuries occurring prior to July 1, 1987, an insurer must give 14 days' written notice to the claimant before reducing benefits from total to partial. However, if an insurer has knowledge that a claimant has returned to work, compensation benefits may be terminated as of the time the claimant returned to work.

(2) Temporary total disability benefits may be terminated on the date that the worker has been released to return to work in some capacity.

History: En. Sec. 1, Ch. 477, L. 1973; amd. Sec. 1, Ch. 173, L. 1974; R.C.M. 1947, 92-615(part); amd. Sec. 8, Ch. 103, L. 1979; amd. Sec. 5, Ch. 333, L. 1989; amd. Sec. 64, Ch. 613, L. 1989; amd. Sec. 10, Ch. 243, L. 1995.

39-71-610. Termination of benefits by insurer — department order to pay disputed benefits prior to hearing or mediation — limitation on order — right of reimbursement. If an insurer terminates biweekly compensation benefits and the termination of compensation benefits is disputed by the claimant, the department may, upon written request, order an insurer to pay additional biweekly compensation benefits prior to a hearing before the workers' compensation court or prior to mediation, but in no event may the biweekly compensation benefits be ordered to be paid under this section for a period exceeding 49 days or for any period subsequent to the date of the hearing or mediation. A party may appeal this order to the workers' compensation court. If after a hearing before the workers' compensation court it is held that the insurer was not liable for the compensation payments ordered by the department, the insurer has the right to be reimbursed for the payments by the claimant.

History: En. 92-617 by Sec. 1, Ch. 124, L. 1975; R.C.M. 1947, 92-617; amd. Sec. 64, Ch. 613, L. 1989; amd. Sec. 13, Ch. 377, L. 1999; amd. Sec. 17, Ch. 442, L. 1999.

Compiler's Comments

1999 Amendments — Composite Section: Chapter 377 in first sentence in two places after "hearing" inserted "or mediation" (first occurrence rendered void by Ch. 442 amendment) and near beginning of third sentence after "hearing" inserted "before the workers' compensation court"; and made minor changes in style. Amendment effective July 1, 1999.

Chapter 442 in first sentence after the first "hearing" inserted "before the workers' compensation court or prior to mediation" and at end inserted "or mediation"; inserted second sentence concerning appeal to workers' compensation court; in third sentence after "hearing" inserted "before the workers' compensation court"; and made minor changes in style. Amendment effective April 23, 1999.

Retroactive Applicability: Section 31(1), Ch. 442, L. 1999, provided that this section applies retroactively, within the meaning of 1-2-109, to claims for injuries occurring before April 23, 1999, unless a party elects, after notification by the department of labor and industry, to remain in the contested case process.

39-71-611. Costs and attorneys' fees payable on denial of claim or termination of benefits later found compensable. (1) The insurer shall pay reasonable costs and attorney fees as established by the workers' compensation court if:

(a) the insurer denies liability for a claim for compensation or terminates compensation benefits;

(b) the claim is later adjudged compensable by the workers' compensation court; and

(c) in the case of attorneys' fees, the workers' compensation court determines that the insurer's actions in denying liability or terminating benefits were unreasonable.

(2) A finding of unreasonableness against an insurer made under this section does not constitute a finding that the insurer acted in bad faith or violated the unfair trade practices provisions of Title 33, chapter 18.

History: En. Sec. 2, Ch. 477, L. 1973; amd. Sec. 2, Ch. 173, L. 1974; R.C.M. 1947, 92-616(part); amd. Sec. 2, Ch. 63, L. 1979; amd. Sec. 16, Ch. 464, L. 1987.

Cross-References

Attorney fees, Title 25, ch. 10, part 3.

39-71-612. Costs and attorneys' fees that may be assessed against an insurer by workers' compensation judge. (1) If an insurer pays or submits a written offer of payment of compensation under chapter 71 or 72 of this title but controversy relates to the amount of compensation due, the case is brought before the workers' compensation judge for adjudication of the controversy, and the award granted by the judge is greater than the amount paid or offered by the insurer, a reasonable attorney's fee and costs as established by the workers' compensation judge if the case has gone to a hearing may be awarded by the judge in addition to the amount of compensation.

(2) An award of attorneys' fees under subsection (1) may only be made if it is determined that the actions of the insurer were unreasonable. Any written offer of payment made 30 days or more before the date of hearing must be considered a valid offer of payment for the purposes of this section.

(3) A finding of unreasonableness against an insurer made under this section does not constitute a finding that the insurer acted in bad faith or violated the unfair trade practices provisions of Title 33, chapter 18.

History: En. 92-618 by Sec. 1, Ch. 187, L. 1975; R.C.M. 1947, 92-618; amd. Sec. 1, Ch. 575, L. 1985; amd. Sec. 17, Ch. 464, L. 1987.

Cross-References

Attorney fees, Title 25, ch. 10, part 3.

39-71-613. Regulation of attorney fees — forfeiture of fee for noncompliance — return of fee when claimant received benefits through fraud or deception. (1) When an attorney represents or acts on behalf of a claimant or any other party on any workers' compensation claim, the attorney shall submit to the department a contract of employment, on a form provided by the department, stating specifically the terms of the fee arrangement between the attorney and the claimant.

(2) The department may regulate the amount of the attorney fees in any workers' compensation case. In regulating the amount of the fees, the department shall consider:

(a) the benefits the claimant gained due to the efforts of the attorney;

(b) the time the attorney was required to spend on the case;

(c) the complexity of the case; and

(d) any other relevant matter the department may consider appropriate.

(3) An attorney who violates a provision of this section, a rule adopted under this section, or an order fixing attorney fees under this section forfeits the right to any fees that the attorney collected or was entitled to collect.

(4) If, after an attorney receives attorney fees and costs assessed against an insurer, the claimant is convicted of having obtained benefits through fraud or deception, the attorney fees and costs for obtaining the benefits must be returned to the insurer by the attorney.

(5) A dispute concerning the forfeiture or return of attorney fees is considered a dispute for which the workers' compensation court has original jurisdiction and is not subject to mediation or a contested case hearing.

History: En. 92-619 by Sec. 1, Ch. 402, L. 1975; R.C.M. 1947, 92-619; amd. Sec. 18, Ch. 464, L. 1987; amd. Sec. 64, Ch. 613, L. 1989; amd. Sec. 1, Ch. 235, L. 1995; amd. Sec. 18, Ch. 442, L. 1999.

Compiler's Comments

1999 Amendment: Chapter 442 inserted (5) concerning original jurisdiction of attorney fees dispute; and made minor changes in style. Amendment effective April 23, 1999.

Retroactive Applicability: Section 31(1), Ch. 442, L. 1999, provided that this section applies retroactively, within the meaning of 1-2-109, to claims for injuries occurring before April 23, 1999, unless a party elects, after notification by the department of labor and industry, to remain in the contested case process.

Cross-References

Attorney fees, Title 25, ch. 10, part 3.

39-71-614. Calculation of attorney fees — limitation. (1) The amount of an attorney's fee assessed against an insurer under 39-71-611 or 39-71-612 must be based exclusively on the time spent by the attorney in representing the claimant on the issues brought to hearing. The attorney must document the time spent, but the judge is not bound by the documentation submitted.

(2) The judge shall determine a reasonable attorney fee and assess costs. The hourly rate applied to the time spent must be based on the attorney's customary and current hourly rate for legal work performed in this state, subject to a maximum established by the department.

(3) This section does not restrict a claimant and an attorney from entering into a contingency fee arrangement under which the attorney receives a percentage of the amount of compensation payments received by the claimant

because of the efforts of the attorney. However, an amount equal to any fee and costs assessed against an insurer under 39-71-611 or 39-71-612 and this section must be deducted from the fee an attorney is entitled to from the claimant under a contingency fee arrangement.

History: **En. Sec. 2, Ch. 575, L. 1985; amd. Sec. 19, Ch. 464, L. 1987; amd. Sec. 64, Ch. 613, L. 1989.**

39-71-615. Payment of medical claims without acceptance of liability. (1) An insurer may pay a medical claim that is based upon the report of a nonwage loss injury or occupational disease without the payments being construed as an acceptance of liability for the claim.

(2) An insurer shall, within 10 days of making payment under subsection (1), notify the worker of the payment of the medical claim without acceptance of liability.

(3) Upon written request by a worker for the payment of indemnity benefits or for a determination of liability, the insurer shall investigate the claim to determine liability for the injury or occupational disease under 39-71-606 or 39-71-608.

History: **En. Sec. 3, Ch. 243, L. 1995.**

Part 7

Compensation and Benefits Generally

Part Cross-References

Definitions, 39-71-116.

Employer defined, 39-71-117.

Employee defined, 39-71-118.

Injury defined, 39-71-119.

Workers' compensation exempt from medical services lien, 71-3-1118.

39-71-701. Compensation for temporary total disability — exception. (1) Subject to the limitation in 39-71-736 and subsection (4) of this section, a worker is eligible for temporary total disability benefits:

(a) when the worker suffers a total loss of wages as a result of an injury and until the worker reaches maximum healing; or

(b) until the worker has been released to return to the employment in which the worker was engaged at the time of the injury or to employment with similar physical requirements.

(2) The determination of temporary total disability must be supported by a preponderance of objective medical findings.

(3) Weekly compensation benefits for injury producing temporary total disability are 66 2⁄3% of the wages received at the time of the injury. The maximum weekly compensation benefits may not exceed the state's average weekly wage at the time of injury. Temporary total disability benefits must be paid for the duration of the worker's temporary disability. The weekly benefit amount may not be adjusted for cost of living as provided in 39-71-702(5).

(4) If the treating physician releases a worker to return to the same, a modified, or an alternative position that the individual is able and qualified to perform with the same employer at an equivalent or higher wage than the individual received at the time of injury, the worker is no longer eligible for temporary total disability benefits even though the worker has not reached maximum healing. A worker requalifies for temporary total disability benefits if the modified or alternative position is no longer available for any reason to

the worker and the worker continues to be temporarily totally disabled, as defined in 39-71-116.

(5) In cases in which it is determined that periodic disability benefits granted by the Social Security Act are payable because of the injury, the weekly benefits payable under this section are reduced, but not below zero, by an amount equal, as nearly as practical, to one-half the federal periodic benefits for the week, which amount is to be calculated from the date of the disability social security entitlement.

(6) If the claimant is awarded social security benefits, the insurer may, upon notification of the claimant's receipt of social security benefits, suspend biweekly compensation benefits for a period sufficient to recover any resulting overpayment of benefits. This subsection does not prevent a claimant and insurer from agreeing to a repayment plan.

(7) A worker may not receive both wages and temporary total disability benefits without the written consent of the insurer. A worker who receives both wages and temporary total disability benefits without written consent of the insurer is guilty of theft and may be prosecuted under 45-6-301.

History: En. 92-701.1 by Sec. 1, Ch. 471, L. 1973; R.C.M. 1947, 92-701.1; amd. Sec. 5, Ch. 21, L. 1981; amd. Sec. 21, Ch. 464, L. 1987; amd. Sec. 4, Ch. 9, Sp. L. June 1989; amd. Sec. 1, Ch. 52, L. 1991; amd. Sec. 5, Ch. 296, L. 1993; amd. Sec. 25, Ch. 619, L. 1993; amd. Sec. 11, Ch. 243, L. 1995.

39-71-702. Compensation for permanent total disability. (1) If a worker is no longer temporarily totally disabled and is permanently totally disabled, as defined in 39-71-116, the worker is eligible for permanent total disability benefits. Permanent total disability benefits must be paid for the duration of the worker's permanent total disability, subject to 39-71-710.

(2) The determination of permanent total disability must be supported by a preponderance of objective medical findings.

(3) Weekly compensation benefits for an injury resulting in permanent total disability are 66 ⅔% of the wages received at the time of the injury. The maximum weekly compensation benefits may not exceed the state's average weekly wage at the time of injury.

(4) In cases in which it is determined that periodic disability benefits granted by the Social Security Act are payable because of the injury, the weekly benefits payable under this section are reduced, but not below zero, by an amount equal, as nearly as practical, to one-half the federal periodic benefits for the week, which amount is to be calculated from the date of the disability social security entitlement.

(5) A worker's benefit amount must be adjusted for a cost-of-living increase on the next July 1 after 104 weeks of permanent total disability benefits have been paid and on each succeeding July 1. A worker may not receive more than 10 adjustments. The adjustment must be the percentage increase, if any, in the state's average weekly wage as adopted by the department over the state's average weekly wage adopted for the previous year or 3%, whichever is less.

(6) A worker may not receive both wages and permanent total disability benefits without the written consent of the insurer. A worker who receives both wages and permanent total disability benefits without written consent of the insurer is guilty of theft and may be prosecuted under 45-6-301.

(7) If the claimant is awarded social security benefits, the insurer may, upon notification of the claimant's receipt of social security benefits, suspend biweekly compensation benefits for a period sufficient to recover any resulting overpayment of benefits. This subsection does not prevent a claimant and insurer from agreeing to a repayment plan.

History: En. 92-702.1 by Sec. 1, Ch. 202, L. 1973; amd. Sec. 1, Ch. 272, L. 1974; R.C.M. 1947, 92-702.1; amd. Sec. 6, Ch. 21, L. 1981; amd. Sec. 22, Ch. 464, L. 1987; amd. Sec. 64, Ch. 613, L. 1989; amd. Sec. 5, Ch. 9, Sp. L. June 1989; amd. Sec. 3, Ch. 574, L. 1991; amd. Sec. 6, Ch. 296, L. 1993; amd. Sec. 27, Ch. 619, L. 1993; amd. Sec. 12, Ch. 243, L. 1995.

39-71-703. Compensation for permanent partial disability. (1) If an injured worker suffers a permanent partial disability and is no longer entitled to temporary total or permanent total disability benefits, the worker is entitled to a permanent partial disability award if that worker:

(a) has an actual wage loss as a result of the injury; and

(b) has a permanent impairment rating that:

(i) is established by objective medical findings; and

(ii) is more than zero as determined by the latest edition of the American medical association Guides to the Evaluation of Permanent Impairment.

(2) When a worker receives an impairment rating as the result of a compensable injury and has no actual wage loss as a result of the injury, the worker is eligible for an impairment award only.

(3) The permanent partial disability award must be arrived at by multiplying the percentage arrived at through the calculation provided in subsection (5) by 350 weeks.

(4) A permanent partial disability award granted an injured worker may not exceed a permanent partial disability rating of 100%.

(5) The percentage to be used in subsection (3) must be determined by adding all of the following applicable percentages to the impairment rating:

(a) if the claimant is 40 years of age or younger at the time of injury, 0%; if the claimant is over 40 years of age at the time of injury, 1%;

(b) for a worker who has completed less than 12 years of education, 1%; for a worker who has completed 12 years or more of education or who has received a graduate equivalency diploma, 0%;

(c) if a worker has no actual wage loss as a result of the industrial injury, 0%; if a worker has an actual wage loss of $2 or less an hour as a result of the industrial injury, 10%; if a worker has an actual wage loss of more than $2 an hour as a result of the industrial injury, 20%. Wage loss benefits must be based on the difference between the actual wages received at the time of injury and the wages that the worker earns or is qualified to earn after the worker reaches maximum healing.

(d) if a worker, at the time of the injury, was performing heavy labor activity and after the injury the worker can perform only light or sedentary labor activity, 5%; if a worker, at the time of injury, was performing heavy labor activity and after the injury the worker can perform only medium labor activity, 3%; if a worker was performing medium labor activity at the time of the injury and after the injury the worker can perform only light or sedentary labor activity, 2%.

(6) The weekly benefit rate for permanent partial disability is 66 ⅔% of the wages received at the time of injury, but the rate may not exceed one-half

the state's average weekly wage. The weekly benefit amount established for an injured worker may not be changed by a subsequent adjustment in the state's average weekly wage for future fiscal years.

(7) If a worker suffers a subsequent compensable injury or injuries to the same part of the body, the award payable for the subsequent injury may not duplicate any amounts paid for the previous injury or injuries.

(8) If a worker is eligible for a rehabilitation plan, permanent partial disability benefits payable under this section must be calculated based on the wages that the worker earns or would be qualified to earn following the completion of the rehabilitation plan.

(9) As used in this section:

(a) "heavy labor activity" means the ability to lift over 50 pounds occasionally or up to 50 pounds frequently;

(b) "medium labor activity" means the ability to lift up to 50 pounds occasionally or up to 25 pounds frequently;

(c) "light labor activity" means the ability to lift up to 20 pounds occasionally or up to 10 pounds frequently; and

(d) "sedentary labor activity" means the ability to lift up to 10 pounds occasionally or up to 5 pounds frequently.

History: En. 92-703.1 by Sec. 1, Ch. 155, L. 1973; amd. Sec. 1, Ch. 241, L. 1975; amd. Sec. 1, Ch. 278, L. 1975; R.C.M. 1947, 92-703.1; amd. Sec. 23, Ch. 464, L. 1987; amd. Sec. 64, Ch. 613, L. 1989; amd. Sec. 6, Ch. 9, Sp. L. June 1989; amd. Sec. 4, Ch. 574, L. 1991; amd. Sec. 13, Ch. 243, L. 1995; amd. Sec. 182, Ch. 42, L. 1997; amd. Sec. 12, Ch. 276, L. 1997.

39-71-704. Payment of medical, hospital, and related services — fee schedules and hospital rates — fee limitation. (1) In addition to the compensation provided under this chapter and as an additional benefit separate and apart from compensation benefits actually provided, the following must be furnished:

(a) After the happening of a compensable injury and subject to other provisions of this chapter, the insurer shall furnish reasonable primary medical services for conditions resulting from the injury for those periods as the nature of the injury or the process of recovery requires.

(b) The insurer shall furnish secondary medical services only upon a clear demonstration of cost-effectiveness of the services in returning the injured worker to actual employment.

(c) The insurer shall replace or repair prescription eyeglasses, prescription contact lenses, prescription hearing aids, and dentures that are damaged or lost as a result of an injury, as defined in 39-71-119, arising out of and in the course of employment.

(d) The insurer shall reimburse a worker for reasonable travel expenses incurred in travel to a medical provider for treatment of an injury only if the travel is incurred at the request of the insurer. Reimbursement must be at the rates allowed for reimbursement of travel by state employees.

(e) Except for the repair or replacement of a prosthesis furnished as a result of an industrial injury, the benefits provided for in this section terminate when they are not used for a period of 60 consecutive months.

(f) Notwithstanding subsection (1)(a), the insurer may not be required to furnish, after the worker has achieved medical stability, palliative or maintenance care except:

(i) when provided to a worker who has been determined to be permanently totally disabled and for whom it is medically necessary to monitor administration of prescription medication to maintain the worker in a medically stationary condition;

(ii) when necessary to monitor the status of a prosthetic device; or

(iii) when the worker's treating physician believes that the care that would otherwise not be compensable under subsection (1)(f) is appropriate to enable the worker to continue current employment or that there is a clear probability of returning the worker to employment. A dispute regarding the compensability of palliative or maintenance care is considered a dispute over which, after mediation pursuant to department rule, the workers' compensation court has jurisdiction.

(g) Notwithstanding any other provisions of this chapter, the department, by rule and upon the advice of the professional licensing boards of practitioners affected by the rule, may exclude from compensability any medical treatment that the department finds to be unscientific, unproved, outmoded, or experimental.

(2) The department shall annually establish a schedule of fees for medical services not provided at a hospital that are necessary for the treatment of injured workers. Charges submitted by providers must be the usual and customary charges for nonworkers' compensation patients. The department may require insurers to submit information to be used in establishing the schedule.

(3) (a) The department shall establish rates for hospital services necessary for the treatment of injured workers.

(b) Except as provided in subsection (3)(g), rates for services provided at a hospital must be the greater of:

(i) 69% of the hospital's January 1, 1997, usual and customary charges; or

(ii) the discount factor established by the department that was in effect on June 30, 1997, for the hospital. The discount factor for a hospital formed by the merger of two or more existing hospitals is computed by using the weighted average of the discount factors in effect at the time of the merger.

(c) Except as provided in subsection (3)(g), beginning July 1, 1998, the department shall adjust hospital discount factors so that the rate of payment does not exceed the annual percentage increase in the state's average weekly wage, as defined in 39-71-116.

(d) The department may establish a fee schedule for hospital outpatient services rendered on or after July 1, 1998. The fee schedule must, in the aggregate, provide for fees that are equal to the statewide average discount factors paid to hospitals to provide the same or equivalent procedure to workers' compensation hospital outpatients.

(e) The discount factors established by the department pursuant to this subsection (3) may not be less than medicaid reimbursement rates.

(f) For services available in Montana, insurers are not required to pay facilities located outside Montana rates that are greater than those allowed for services delivered in Montana.

(g) For a hospital licensed as a medical assistance facility pursuant to Title 50, chapter 5, the rate for services is the hospital's usual and customary charge. Fees paid to a hospital licensed as a medical assistance facility are not subject to the limitation provided in subsection (4).

(4) The percentage increase in medical costs payable under this chapter may not exceed the annual percentage increase in the state's average weekly wage, as defined in 39-71-116.

(5) Payment pursuant to reimbursement agreements between managed care organizations or preferred provider organizations and insurers is not bound by the provisions of this section.

(6) Disputes between an insurer and a medical service provider regarding the amount of a fee for medical services must be resolved by a hearing before the department upon written application of a party to the dispute.

(7) (a) After the initial visit, the worker is responsible for 20%, but not to exceed $10, of the cost of each subsequent visit to a medical service provider for treatment relating to a compensable injury or occupational disease, unless the visit is to a medical service provider in a managed care organization as requested by the insurer or is a visit to a preferred provider as requested by the insurer.

(b) After the initial visit, the worker is responsible for $25 of the cost of each subsequent visit to a hospital emergency department for treatment relating to a compensable injury or occupational disease.

(c) "Visit", as used in subsections (7)(a) and (7)(b), means each time that the worker obtains services relating to a compensable injury or occupational disease from:

(i) a treating physician;

(ii) a physical therapist;

(iii) a psychologist; or

(iv) hospital outpatient services available in a nonhospital setting.

(d) A worker is not responsible for the cost of a subsequent visit pursuant to subsection (7)(a) if the visit is an examination requested by an insurer pursuant to 39-71-605.

History: En. 92-706.1 by Sec. 1, Ch. 252, L. 1973; amd. Sec. 1, Ch. 43, L. 1975; amd. Sec. 1, Ch. 189, L. 1975; R.C.M. 1947, 92-706.1(1); amd. Sec. 1, Ch. 90, L. 1981; amd. Sec. 2, Ch. 422, L. 1985; amd. Sec. 25, Ch. 464, L. 1987; amd. Sec. 4, Ch. 333, L. 1989; amd. Secs. 23, 64, Ch. 613, L. 1989; amd. Sec. 7, Ch. 9, Sp. L. June 1989; amd. Sec. 1, Ch. 131, L. 1991; amd. Sec. 6, Ch. 558, L. 1991; amd. Sec. 5, Ch. 574, L. 1991; amd. Sec. 3, Ch. 628, L. 1993; amd. Sec. 1, Ch. 308, L. 1997; amd. Sec. 8, Ch. 310, L. 1997; amd. Sec. 19, Ch. 442, L. 1999.

Compiler's Comments

1999 Amendment: Chapter 442 at beginning of first sentence of (1)(f)(iii) substituted "when" for "If", after "that" deleted "palliative or maintenance", and at end deleted "the treating physician shall first request approval from the insurer for the treatment", deleted former second and third sentences that read: "If approval is not granted, the treating physician may request approval from the department for the treatment. The department shall appoint a panel of physicians, including at least one treating physician from the area of specialty in which the injured worker is being treated, pursuant to rules that the department may adopt, to review the proposed treatment and determine its appropriateness", and inserted second sentence concerning jurisdiction of dispute over palliative or maintenance care; in (3)(b) after "(3)(g)" deleted "for the fiscal year beginning July 1, 1997"; and made minor changes in style. Amendment effective April 23, 1999.

Retroactive Applicability: Section 31(1), Ch. 442, L. 1999, provided that this section applies retroactively, within the meaning of 1-2-109, to claims for injuries occurring before April 23, 1999, unless a party elects, after notification by the department of labor and industry, to remain in the contested case process.

39-71-705. Repealed. Sec. 68, Ch. 464, L. 1987.

History: En. Sec. 16, Ch. 96, L. 1915; amd. Sec. 8, Ch. 100, L. 1919; amd. Sec. 5, Ch. 196, L. 1921; re-en. Sec. 2920, R.C.M. 1921; amd. Sec. 16, Ch. 121, L. 1925; amd. Sec. 16, Ch. 177, L. 1929; re-en. Sec. 2920, R.C.M. 1935; amd. Sec. 5, Ch. 213, L. 1945; amd. Sec. 5, Ch. 230, L. 1947; amd. Sec. 6, Ch. 7, L. 1949; amd. Sec. 5, Ch. 48, L. 1951; amd. Sec. 5, Ch. 38, L. 1953; amd. Sec. 6, Ch. 253, L. 1955; amd. Sec. 7, Ch. 234, L. 1957; amd. Sec. 5, Ch. 162, L. 1961; amd. Sec. 5, Ch. 149, L. 1965; amd. Sec. 5, Ch. 207, L. 1967; amd. Sec. 1, Ch. 140, L. 1971; amd. Sec. 1, Ch. 204, L. 1973; amd. Sec. 2, Ch. 386, L. 1975; R.C.M. 1947, 92-709(part).

39-71-706. Repealed. Sec. 68, Ch. 464, L. 1987.

History: (1), (2), (4)En. Sec. 16, Ch. 96, L. 1915; amd. Sec. 8, Ch. 100, L. 1919; amd. Sec. 5, Ch. 196, L. 1921; re-en. Sec. 2920, R.C.M. 1921; amd. Sec. 16, Ch. 121, L. 1925; amd. Sec. 16, Ch. 177, L. 1929; re-en. Sec. 2920, R.C.M. 1935; amd. Sec. 5, Ch. 213, L. 1945; amd. Sec. 5, Ch. 230, L. 1947; amd. Sec. 6, Ch. 7, L. 1949; amd. Sec. 5, Ch. 48, L. 1951; amd. Sec. 5, Ch. 38, L. 1953; amd. Sec. 6, Ch. 253, L. 1955; amd. Sec. 7, Ch. 234, L. 1957; amd. Sec. 5, Ch. 162, L. 1961; amd. Sec. 5, Ch. 149, L. 1965; amd. Sec. 5, Ch. 207, L. 1967; amd. Sec. 1, Ch. 140, L. 1971; amd. Sec. 1, Ch. 204, L. 1973; amd. Sec. 2, Ch. 386, L. 1975; Sec. 92-709, R.C.M. 1947; (3)En. Sec. 16, Ch. 96, L. 1915; re-en. Sec. 2922, R.C.M. 1921; re-en. Sec. 2922, R.C.M. 1935; Sec. 92-711, R.C.M. 1947; R.C.M. 1947, 92-709(part), 92-711.

39-71-707. Repealed. Sec. 68, Ch. 464, L. 1987.

History: En. Sec. 16, Ch. 96, L. 1915; amd. Sec. 8, Ch. 100, L. 1919; amd. Sec. 5, Ch. 196, L. 1921; re-en. Sec. 2920, R.C.M. 1921; amd. Sec. 16, Ch. 121, L. 1925; amd. Sec. 16, Ch. 177, L. 1929; re-en. Sec. 2920, R.C.M. 1935; amd. Sec. 5, Ch. 213, L. 1945; amd. Sec. 5, Ch. 230, L. 1947; amd. Sec. 6, Ch. 7, L. 1949; amd. Sec. 5, Ch. 48, L. 1951; amd. Sec. 5, Ch. 38, L. 1953; amd. Sec. 6, Ch. 253, L. 1955; amd. Sec. 7, Ch. 234, L. 1957; amd. Sec. 5, Ch. 162, L. 1961; amd. Sec. 5, Ch. 149, L. 1965; amd. Sec. 5, Ch. 207, L. 1967; amd. Sec. 1, Ch. 140, L. 1971; amd. Sec. 1, Ch. 204, L. 1973; amd. Sec. 2, Ch. 386, L. 1975; R.C.M. 1947, 92-709(part).

39-71-708. Compensation for disfigurement. (1) Injured workers who suffer serious face, head, or neck disfigurement may be entitled to benefits not to exceed $2,500, in addition to benefits payable under 39-71-703.

(2) A payment under this section may not be in lieu of the separate benefit of medical and hospital services or of any benefits paid under 39-71-701 for temporary total disability.

History: En. Sec. 16, Ch. 96, L. 1915; amd. Sec. 8, Ch. 100, L. 1919; amd. Sec. 5, Ch. 196, L. 1921; re-en. Sec. 2920, R.C.M. 1921; amd. Sec. 16, Ch. 121, L. 1925; amd. Sec. 16, Ch. 177, L. 1929; re-en. Sec. 2920, R.C.M. 1935; amd. Sec. 5, Ch. 213, L. 1945; amd. Sec. 5, Ch. 230, L. 1947; amd. Sec. 6, Ch. 7, L. 1949; amd. Sec. 5, Ch. 48, L. 1951; amd. Sec. 5, Ch. 38, L. 1953; amd. Sec. 6, Ch. 253, L. 1955; amd. Sec. 7, Ch. 234, L. 1957; amd. Sec. 5, Ch. 162, L. 1961; amd. Sec. 5, Ch. 149, L. 1965; amd. Sec. 5, Ch. 207, L. 1967; amd. Sec. 1, Ch. 140, L. 1971; amd. Sec. 1, Ch. 204, L. 1973; amd. Sec. 2, Ch. 386, L. 1975; R.C.M. 1947, 92-709(part); amd. Sec. 26, Ch. 464, L. 1987; amd. Sec. 64, Ch. 613, L. 1989; amd. Sec. 7, Ch. 555, L. 1993.

39-71-709. Repealed. Sec. 68, Ch. 464, L. 1987.

History: En. 92-709.2 by Sec. 1, Ch. 386, L. 1975; R.C.M. 1947, 92-709.2.

39-71-710. Termination of benefits upon retirement. (1) If a claimant is receiving disability or rehabilitation compensation benefits and the claimant receives social security retirement benefits or is eligible to receive or is receiving full social security retirement benefits or retirement benefits from a system that is an alternative to social security retirement, the claimant is considered to be retired. When the claimant is retired, the liability of the insurer is ended for payment of permanent partial disability benefits other than the impairment award, payment of permanent total disability benefits, and payment of rehabilitation compensation benefits. However, the insurer remains liable for temporary total disability benefits, any impairment award, and medical benefits.

(2) If a claimant who is eligible under subsection (1) to receive retirement benefits and while gainfully employed suffers a work-related injury, the insurer retains liability for temporary total disability benefits, any impairment award, and medical benefits.

History: En. Sec. 1, Ch. 386, L. 1981; amd. Sec. 27, Ch. 464, L. 1987; amd. Sec. 14, Ch. 243, L. 1995; amd. Sec. 13, Ch. 516, L. 1995.

39-71-711. Impairment evaluation — ratings. (1) An impairment rating:

(a) is a purely medical determination and must be determined by an impairment evaluator after a claimant has reached maximum healing;

(b) must be based on the current edition of the Guides to Evaluation of Permanent Impairment published by the American medical association;

(c) must be expressed as a percentage of the whole person; and

(d) must be established by objective medical findings.

(2) A claimant or insurer, or both, may obtain an impairment rating from an evaluator who is a medical doctor or from an evaluator who is a chiropractor if the injury falls within the scope of chiropractic practice. If the claimant and insurer cannot agree upon the rating, the mediation procedure in part 24 of this chapter must be followed.

(3) An evaluator must be a physician licensed under Title 37, chapter 3, except if the claimant's treating physician is a chiropractor, the evaluator may be a chiropractor who is certified as an evaluator under chapter 12.

(4) Disputes over impairment ratings are not subject to 39-71-605.

History: En. Sec. 24, Ch. 464, L. 1987; amd. Sec. 2, Ch. 161, L. 1989; amd. Sec. 64, Ch. 613, L. 1989; amd. Sec. 7, Ch. 558, L. 1991; amd. Sec. 15, Ch. 243, L. 1995.

39-71-712. Temporary partial disability benefits. (1) If, prior to maximum healing, an injured worker has a physical restriction and is approved to return to a modified or alternative employment that the worker is able and qualified to perform and the worker suffers an actual wage loss as a result of a temporary work restriction, the worker qualifies for temporary partial disability benefits.

(2) An insurer's liability for temporary partial disability must be the difference between the injured worker's average weekly wage received at the time of the injury, subject to a maximum of 40 hours a week, and the actual weekly wages earned during the period that the claimant is temporarily partially disabled, not to exceed the injured worker's temporary total disability benefit rate.

(3) Temporary partial disability benefits are limited to a total of 26 weeks. The insurer may extend the period of temporary partial disability payments.

(4) A worker is not eligible for temporary partial disability benefits or temporary total disability benefits if:

(a) the worker has been released by the treating physician to return to a modified or alternative position that the individual is able and qualified to perform with the same employer;

(b) the wages payable in the modified or alternative position, when combined with the temporary partial disability benefits, would result in an equivalent or higher wage than the worker received at the time of injury; and

(c) the worker refuses to accept the modified or alternative position. A worker requalifies for temporary total disability benefits if the modified or alternative position is no longer available to the worker and the worker continues to be temporarily totally disabled as defined in 39-71-116.

(5) Temporary partial disability may not be credited against any permanent partial disability award or settlement under 39-71-703.

History: En. Sec. 6, Ch. 619, L. 1993; amd. Sec. 16, Ch. 243, L. 1995; amd. Sec. 13, Ch. 276, L. 1997.

39-71-713 through 39-71-720 reserved.

39-71-721. Compensation for injury causing death — limitation. (1) (a) If an injured employee dies and the injury was the proximate cause of the death, the beneficiary of the deceased is entitled to the same compensation as though the death occurred immediately following the injury. A beneficiary's eligibility for benefits commences after the date of death, and the benefit level is established as set forth in subsection (2).

(b) The insurer is entitled to recover any overpayments or compensation paid in a lump sum to a worker prior to death but not yet recouped. The insurer shall recover the payments from the beneficiary's biweekly payments as provided in 39-71-741(3).

(2) To beneficiaries as defined in 39-71-116(5)(a) through (5)(d), weekly compensation benefits for an injury causing death are 66 ⅔% of the decedent's wages. The maximum weekly compensation benefit may not exceed the state's average weekly wage at the time of injury. The minimum weekly compensation benefit is 50% of the state's average weekly wage, but in no event may it exceed the decedent's actual wages at the time of death.

(3) To beneficiaries as defined in 39-71-116(5)(e) and (5)(f), weekly benefits must be paid to the extent of the dependency at the time of the injury, subject to a maximum of 66 ⅔% of the decedent's wages. The maximum weekly compensation may not exceed the state's average weekly wage at the time of injury.

(4) If the decedent leaves no beneficiary, a lump-sum payment of $3,000 must be paid to the decedent's surviving parent or parents.

(5) If any beneficiary of a deceased employee dies, the right of the beneficiary to compensation under this chapter ceases. Death benefits must be paid to a surviving spouse for 500 weeks subsequent to the date of the deceased employee's death or until the spouse's remarriage, whichever occurs first. After benefit payments cease to a surviving spouse, death benefits must be paid to beneficiaries, if any, as defined in 39-71-116(5)(b) through (5)(d).

(6) In all cases, benefits must be paid to beneficiaries.

(7) Benefits paid under this section may not be adjusted for cost of living as provided in 39-71-702.

History: (1)En. Sec. 12, Ch. 96, L. 1915; re-en. Sec. 2905, R.C.M. 1921; re-en. Sec. 2905, R.C.M. 1935; amd. Sec. 15, Ch. 23, L. 1975; Sec. 92-608, R.C.M. 1947; (2) thru (6)Ap. p. 92-704.1 by Sec. 1, Ch. 203, L. 1973; amd. Sec. 2, Ch. 269, L. 1974; amd. Sec. 1, Ch. 270, L. 1974; amd. Sec. 2, Ch. 272, L. 1974; Sec. 92-704.1, R.C.M. 1947; Ap. p. Sec. 7, Ch. 96, L. 1915; re-en. Sec. 2892, R.C.M. 1921; re-en. Sec. 2892, R.C.M. 1935; amd. Sec. 10, Ch. 23, L. 1975; Sec. 92-502, R.C.M. 1947; R.C.M. 1947, 92-704.1, 92-502, 92-608(1); amd. Sec. 67, Ch. 197, L. 1979; amd. Sec. 29, Ch. 464, L. 1987; amd. Sec. 8, Ch. 9, Sp. L. June 1989; amd. Sec. 6, Ch. 480, L. 1991; amd. Sec. 17, Ch. 243, L. 1995; amd. Sec. 14, Ch. 516, L. 1995; amd. Sec. 9, Ch. 310, L. 1997.

39-71-722. Who constitutes beneficiary to be determined as of date of accident. The question as to who constitutes a beneficiary shall be determined as of the date of the happening of the accident to the employee, whether death shall immediately result therefrom or not.

History: En. Sec. 12, Ch. 96, L. 1915; re-en. Sec. 2905, R.C.M. 1921; re-en. Sec. 2905, R.C.M. 1935; amd. Sec. 15, Ch. 23, L. 1975; R.C.M. 1947, 92-608(3).

39-71-723. How compensation to be divided among beneficiaries. Compensation that is due to beneficiaries must be paid to the surviving spouse, if any, or if none, divided equally among or for the benefit of the children. In cases in which beneficiaries are a surviving spouse and stepchildren of the spouse, the compensation must be divided equally among all beneficiaries. Compensation that is due to beneficiaries, as defined in 39-71-116(5)(e) and (5)(f), if there is more than one, must be divided equitably among them.

History: En. Sec. 16, Ch. 96, L. 1915; re-en. Sec. 2919, R.C.M. 1921; amd. Sec. 15, Ch. 121, L. 1925; re-en. Sec. 2919, R.C.M. 1935; amd. Sec. 4, Ch. 213, L. 1945; amd. Sec. 7, Ch. 235, L. 1947; amd. Sec. 7, Ch. 253, L. 1955; amd. Sec. 1, Ch. 205, L. 1973; amd. Sec. 3, Ch. 269, L. 1974; R.C.M. 1947, 92-708(part); amd. Sec. 64, Ch. 613, L. 1989; amd. Sec. 7, Ch. 480, L. 1991; amd. Sec. 18, Ch. 243, L. 1995; amd. Sec. 15, Ch. 516, L. 1995; amd. Sec. 7, Ch. 172, L. 1997.

39-71-724. Payment of compensation to beneficiary not a resident of United States. (1) Before payment of compensation to a beneficiary who is not residing within the United States, satisfactory proof of the relationship as to constitute a beneficiary under this chapter must be furnished by the beneficiary, authenticated under seal of an officer of a court of law in the country where the beneficiary resides. The proof is conclusive as to the identity of the beneficiary, and any other claim of any other person to any compensation is barred from and after the filing of the proof.

(2) Payment of compensation to a beneficiary not residing within the United States may be made to any plenipotentiary, consul, or consular agent within the United States representing the country in which the nonresident beneficiary resides, and the written receipt of the plenipotentiary, consul, or consular agent acquits the employer or the insurer.

History: (1)En. Sec. 8, Ch. 96, L. 1915; re-en. Sec. 2896, R.C.M. 1921; re-en. Sec. 2896, R.C.M. 1935; amd. Sec. 11, Ch. 23, L. 1975; Sec. 92-506, R.C.M. 1947; (2)En. Sec. 9, Ch. 96, L. 1915; re-en. Sec. 2897, R.C.M. 1921; re-en. Sec. 2897, R.C.M. 1935; amd. Sec. 12, Ch. 23, L. 1975; Sec. 92-507, R.C.M. 1947; R.C.M. 1947, 92-506, 92-507; amd. Sec. 64, Ch. 613, L. 1989; amd. Sec. 8, Ch. 172, L. 1997.

39-71-725. Payment of burial expense. There must be paid, in case of the death of an employee whose death is the result of an accidental injury arising out of the employment and happening in the course of the employment, the reasonable burial expenses of the employee, not exceeding $4,000. The payment is not a part of the compensation that might be paid but is a benefit in addition to and separate from compensation.

History: **En. Sec. 16, Ch. 96, L. 1915; amd. Sec. 2, Ch. 196, L. 1921; re-en. Sec. 2916, R.C.M. 1921; amd. Sec. 13, Ch. 121, L. 1925; re-en. Sec. 2916, R.C.M. 1935; amd. Sec. 1, Ch. 128, L. 1943; amd. Sec. 1, Ch. 213, L. 1945; amd. Sec. 6, Ch. 38, L. 1953; amd. Sec. 5, Ch. 234, L. 1957; amd. Sec. 1, Ch. 194, L. 1974; R.C.M. 1947, 92-705; amd. Sec. 7, Ch. 21, L. 1981; amd. Sec. 14, Ch. 377, L. 1999.**

Compiler's Comments

1999 Amendment: Chapter 377 increased burial expenses maximum payment from $1,400 to $4,000; and made minor changes in style. Amendment effective July 1, 1999.

39-71-726. No compensation after death where death not result of injury. If the employee shall die from some cause other than the injury, there shall be no liability for compensation after his death.

History: **En. Sec. 12, Ch. 96, L. 1915; re-en. Sec. 2905, R.C.M. 1921; re-en. Sec. 2905, R.C.M. 1935; amd. Sec. 15, Ch. 23, L. 1975; R.C.M. 1947, 92-608(2).**

39-71-727. Payment for prescription drugs — limitations. (1) For payment of prescription drugs, an insurer is liable only for the purchase of generic-name drugs if the generic-name product is the therapeutic equivalent of the brand-name drug prescribed by the physician, unless the generic-name drug is unavailable.

(2) If an injured worker prefers a brand-name drug, the worker may pay directly to the pharmacist the difference in the reimbursement rate between the brand-name drug and the generic-name product, and the pharmacist may bill the insurer only for the reimbursement rate of the generic-name drug.

(3) The pharmacist may bill only for the cost of the generic-name product on a signed itemized billing, except if purchase of the brand-name drug is allowed as provided in subsection (1).

(4) When billing for a brand-name drug, the pharmacist shall certify that the generic-name drug was unavailable.

(5) Reimbursement rates payable by an insurer are limited to the average wholesale price of the product at the time of dispensing, plus a dispensing fee not to exceed $5.50 per product.

(6) The pharmacist may not dispense more than a 30-day supply at any one time.

(7) For purposes of this section, average wholesale prices must be updated weekly.

(8) For purposes of this section, the terms "brand name", "drug product", and "generic name" have the same meaning as provided in 37-7-502.

(9) An insurer may not require a worker receiving benefits under this chapter to obtain medications from an out-of-state mail service pharmacy.

(10) The provisions of this section do not apply to an agreement between a preferred provider organization and an insurer.

History: **En. Sec. 2, Ch. 131, L. 1991; amd. Sec. 4, Ch. 628, L. 1993; amd. Sec. 19, Ch. 243, L. 1995.**

39-71-728 through 39-71-735 reserved.

39-71-736. Compensation — from what date paid. (1) (a) No compensation may be paid for the first 48 hours or 6 days' loss of wages, whichever is less, that the claimant is totally disabled and unable to work due to an injury. A claimant is eligible for compensation starting with the 7th day.

(b) However, separate benefits of medical and hospital services must be furnished from the date of injury.

(2) For the purpose of this section, except as provided in subsection (3), an injured worker is not considered to be entitled to compensation benefits if the worker is receiving sick leave benefits, except that each day for which the worker elects to receive sick leave counts 1 day toward the 6-day waiting period.

(3) Augmentation of temporary total disability benefits with sick leave by an employer pursuant to a collective bargaining agreement may not disqualify a worker from receiving temporary total disability benefits.

(4) Receipt of vacation leave by an injured worker may not affect the worker's eligibility for temporary total disability benefits.

History: En. Sec. 16, Ch. 96, L. 1915; amd. Sec. 4, Ch. 196, L. 1921; re-en. Sec. 2918, R.C.M. 1921; amd. Sec. 3, Ch. 177, L. 1929; re-en. Sec. 2918, R.C.M. 1935; amd. Sec. 3, Ch. 213, L. 1945; amd. Sec. 5, Ch. 7, L. 1949; amd. Sec. 1, Ch. 144, L. 1969; amd. Sec. 18, Ch. 23, L. 1975; amd. Sec. 45, Ch. 535, L. 1975; R.C.M. 1947, 92-707; amd. Sec. 9, Ch. 103, L. 1979; amd. Sec. 30, Ch. 464, L. 1987; amd. Sec. 6, Ch. 333, L. 1989; amd. Sec. 18, Ch. 619, L. 1993.

39-71-737. Compensation to run consecutively — exceptions. Compensation must run consecutively and not concurrently, and payment may not be made for two classes of disability over the same period, except that impairment awards and auxiliary rehabilitation benefits may be paid concurrently with other classes of benefits.

History: En. Sec. 16, Ch. 96, L. 1915; re-en. Sec. 2919, R.C.M. 1921; amd. Sec. 15, Ch. 121, L. 1925; re-en. Sec. 2919, R.C.M. 1935; amd. Sec. 4, Ch. 213, L. 1945; amd. Sec. 7, Ch. 235, L. 1947; amd. Sec. 7, Ch. 253, L. 1955; amd. Sec. 1, Ch. 205, L. 1973; amd. Sec. 3, Ch. 269, L. 1974; R.C.M. 1947, 92-708(part); amd. Sec. 2, Ch. 374, L. 1985; amd. Sec. 1, Ch. 502, L. 1985; amd. Sec. 31, Ch. 464, L. 1987; amd. Sec. 16, Ch. 516, L. 1995.

39-71-738. Repealed. Sec. 68, Ch. 464, L. 1987.

History: En. Sec. 16, Ch. 96, L. 1915; re-en. Sec. 2923, R.C.M. 1921; amd. Sec. 5, Ch. 177, L. 1929; re-en. Sec. 2923, R.C.M. 1935; R.C.M. 1947, 92-712; amd. Sec. 68, Ch. 397, L. 1979.

39-71-739. Compensation in case of changes in degree of injury. If aggravation, diminution, or termination of disability takes place or is discovered after the rate of compensation is established or compensation is terminated in any case where the maximum payments for disabilities as provided in this chapter are not reached, adjustments may be made to meet such changed conditions by increasing, diminishing, or terminating compensation payments in accordance with the provisions of this chapter.

History: En. Sec. 16, Ch. 96, L. 1915; re-en. Sec. 2924, R.C.M. 1921; amd. Sec. 6, Ch. 177, L. 1929; re-en. Sec. 2924, R.C.M. 1935; R.C.M. 1947, 92-713; amd. Sec. 69, Ch. 397, L. 1979.

39-71-740. Payments — how made in most cases. All payments of compensation as provided in this chapter shall be made at the end of each 2-week period, except as otherwise provided herein.

History: En. Sec. 16, Ch. 96, L. 1915; re-en. Sec. 2925, R.C.M. 1921; re-en. Sec. 2925, R.C.M. 1935; amd. Sec. 9, Ch. 235, L. 1947; amd. Sec. 1, Ch. 197, L. 1961; R.C.M. 1947, 92-714.

39-71-741. Compromise settlements and lump-sum payments. (1) By written agreement filed with the department, benefits under this chapter may be converted in whole or in part into a lump sum. An agreement is subject to department approval. If the department fails to approve or disapprove the agreement in writing within 14 days of the filing with the department, the agreement is approved. The department shall directly notify a claimant of a department order approving or disapproving a claimant's compromise or lump-sum payment. Upon approval, the agreement constitutes a compromise and release settlement and may not be reopened by the department. The department may approve an agreement to convert the following benefits to a lump sum only under the following conditions:

(a) all benefits if a claimant and an insurer dispute the initial compensability of an injury and there is a reasonable dispute over compensability;

(b) permanent partial disability benefits if an insurer has accepted initial liability for an injury. The total of any permanent partial lump-sum conversion in part that is awarded to a claimant prior to the claimant's final award may not exceed the anticipated award under 39-71-703. The department may disapprove an agreement under this subsection (1)(b) only if the department determines that the lump-sum conversion amount is inadequate.

(c) permanent total disability benefits if the total of all lump-sum conversions in part that are awarded to a claimant do not exceed $20,000. The approval or award of a lump-sum permanent total disability payment in whole or in part by the department or court must be the exception. It may be given only if the worker has demonstrated financial need that:

(i) relates to:

(A) the necessities of life;

(B) an accumulation of debt incurred prior to the injury; or

(C) a self-employment venture that is considered feasible under criteria set forth by the department; or

(ii) arises subsequent to the date of injury or arises because of reduced income as a result of the injury; or

(d) except as otherwise provided in this chapter, all other compromise settlements and lump-sum payments agreed to by a claimant and insurer.

(2) Any lump-sum conversion of benefits under this section must be converted to present value using the rate prescribed under subsection (3)(b).

(3) (a) An insurer may recoup any lump-sum payment amortized at the rate established by the department, prorated biweekly over the projected duration of the compensation period.

(b) The rate adopted by the department must be based on the average rate for United States 10-year treasury bills in the previous calendar year.

(c) If the projected compensation period is the claimant's lifetime, the life expectancy must be determined by using the most recent table of life expectancy as published by the United States national center for health statistics.

(4) A dispute between a claimant and an insurer regarding the conversion of biweekly payments into a lump-sum is considered a dispute for which a mediator and the workers' compensation court have jurisdiction to make a determination. If an insurer and a claimant agree to a compromise and release settlement or a lump-sum payment but the department disapproves the agreement, the parties may request the workers' compensation court to review the department's decision.

History: En. Sec. 16, Ch. 96, L. 1915; amd. Sec. 9, Ch. 100, L. 1919; re-en. Sec. 2926, R.C.M. 1921; re-en. Sec. 2926, R.C.M. 1935; amd. Sec. 1, Ch. 225, L. 1951; amd. Sec. 8, Ch. 234, L. 1957; amd. Sec. 2, Ch. 197, L. 1961; amd. Sec. 1, Ch. 9, L. 1975; amd. Sec. 1, Ch. 11, L. 1975; amd. Sec. 19, Ch. 23, L. 1975; R.C.M. 1947, 92-715; amd. Sec. 3, Ch. 63, L. 1979; amd. Sec. 1, Ch. 471, L. 1985; amd. Sec. 32, Ch. 464, L. 1987; amd. Sec. 64, Ch. 613, L. 1989; amd. Sec. 6, Ch. 574, L. 1991; amd. Sec. 20, Ch. 243, L. 1995; amd. Sec. 10, Ch. 310, L. 1997.

39-71-742. Who may receive payment. (1) Where payment is due to a child under 18 years of age or to a person adjudged incompetent, the same shall be made to the parent or to the duly appointed guardian, as the case may be, and the written receipt of such parent or guardian shall acquit the employer, the insurer, or department, as the case may be, of further liability.

(2) In other cases, payment shall be made to the person entitled thereto or to his duly authorized representative.

History: En. Sec. 9, Ch, 96, L. 1915; re-en. Sec. 2898, R.C.M. 1921; amd. Sec. 8, Ch. 121, L. 1925; re-en. Sec. 2898, R.C.M. 1935; amd. Sec. 13, Ch. 23, L. 1975; R.C.M. 1947, 92-508; amd. Sec. 64, Ch. 613, L. 1989.

39-71-743. Assignment or attachment of payments. (1) Payments under this chapter may not be assignable, subject to attachment or garnishment, or held liable in any way for debts, except:

(a) as provided in 71-3-1118;

(b) a portion of any lump-sum award or periodic payment to pay a monetary obligation for current or past-due child support, subject to the limitations in subsection (2), whenever the support obligation is established by order of a court of competent jurisdiction or by order rendered in an administrative process authorized by state law; or

(c) as provided in 53-2-612 or 53-2-613 for medical benefits paid pursuant to chapter 71 or 72 of this title.

(2) Payments under this chapter are subject to assignment, attachment, or garnishment for child support as follows:

(a) for any periodic payment, an amount up to the percentage amount established in the guidelines promulgated by the department of public health and human services pursuant to 40-5-209; or

(b) for any lump-sum award, an amount up to that portion of the award that is approved for payment on the basis of a past-due child support obligation.

(3) After determination that the claim is covered under the Workers' Compensation Act or Occupational Disease Act of Montana, the liability for payment of the claim is the responsibility of the appropriate workers' compensation insurer. Except as provided in 39-71-704(7), a fee or charge is not payable by the injured worker for treatment of injuries sustained if liability is accepted by the insurer.

History: En. Sec. 17, Ch. 96, L. 1915; re-en. Sec. 2927, R.C.M. 1921; re-en. Sec. 2927, R.C.M. 1935; R.C.M. 1947, 92-801; amd. Sec. 3, Ch. 496, L. 1983; amd. Sec. 1, Ch. 485, L. 1987; amd. Sec. 19, Ch. 702, L. 1989; amd. Sec. 14, Ch. 628, L. 1993; amd. Sec. 2, Ch. 424, L. 1995; amd. Sec. 104, Ch. 546, L. 1995.

Cross-References

Property exempt from execution without limitation — exceptions, 25-13-608.

Exempt property — bankruptcy proceeding, 31-2-106.

39-71-744. Benefits not due while claimant is incarcerated — exceptions. (1) Except as provided in subsection (2), a claimant is not eligible for disability or rehabilitation compensation benefits while the claimant is incarcerated for a period exceeding 30 days in a correctional institution or jail as the result of conviction of a felony or a misdemeanor. The insurer remains liable for medical benefits. A time limit on benefits otherwise provided in this chapter is not extended due to a period of incarceration.

(2) A person who is employed while participating in a prerelease center program or a diversionary program is eligible for temporary total benefits as provided in 39-71-701 and medical benefits for a work-related injury received while participating in a prerelease center program or a diversionary program. Other disability or rehabilitation benefits are not payable while the worker is participating in a prerelease center. This subsection does not prohibit the reinstatement of other benefits upon release from incarceration, nor does it apply to an employee performing community service described in 39-71-118(1)(e).

History: En. Sec. 28, Ch. 464, L. 1987; amd. Sec. 1, Ch. 457, L. 1993; amd. Sec. 21, Ch. 243, L. 1995; amd. Sec. 31, Ch. 308, L. 1995; amd. Sec. 105, Ch. 546, L. 1995.

Part 8
Compensation for Occupational Deafness

Part Cross-References
Definitions, 39-71-116, 39-71-802.
Employer defined, 39-71-117.
Employee defined, 39-71-118.
Injury defined, 39-71-119.

39-71-801. Occupational deafness compensated as provided in part. Regardless of other definitions of injury and time limitations imposed by this chapter, compensation is awarded for occupational deafness as provided in this part.

History: En. 92-710 by Sec. 1, Ch. 366, L. 1971; amd. Sec. 1, Ch. 381, L. 1973; R.C.M. 1947, 92-710(part); amd. Sec. 70, Ch. 397, L. 1979.

39-71-802. Definitions. (1) "Noise" means sound capable of producing occupational deafness.

(2) "Noisy employment" means employment in the performance of which an employee is subjected to noise.

(3) "Occupational deafness" means permanent partial or permanent total loss of hearing of one or both ears due to prolonged exposure to noise in employment.

History: En. 92-710 by Sec. 1, Ch. 366, L. 1971; amd. Sec. 1, Ch. 381, L. 1973; R.C.M. 1947, 92-710(part).

39-71-803. Occupational deafness distinguished from traumatic loss of hearing. Occupational deafness as herein provided is distinguished from traumatic loss of hearing, which may be compensated under parts 7 and 10 of this chapter.

History: En. 92-710 by Sec. 1, Ch. 366, L. 1971; amd. Sec. 1, Ch. 381, L. 1973; R.C.M. 1947, 92-710(8); amd. Sec. 33, Ch. 464, L. 1987.

39-71-804. Compensable loss of hearing confined to certain frequencies. Losses of hearing due to industrial noise for compensation purposes shall be confined to the frequencies of 500, 1,000, and 2,000 cycles per second. Loss of hearing ability for frequency tones above 2,000 cycles per second is not to be considered as constituting disability for hearing.

History: En. 92-710 by Sec. 1, Ch. 366, L. 1971; amd. Sec. 1, Ch. 381, L. 1973; R.C.M. 1947, 92-710(1)(a).

39-71-805. Determining percent of hearing loss. (1) The percent of hearing loss, for purposes of the determination of compensation claims for occupational deafness, shall be calculated as the average in decibels of the thresholds of hearing for the frequencies of 500, 1,000, and 2,000 cycles per second. Pure tone air conduction audiometric instruments, approved by nationally recognized authorities in this field, shall be used for measuring hearing loss. If the losses of hearing average 25 decibels or less in the three frequencies, as measured under ISO Standard 1964, such losses of hearing shall not then constitute any compensable hearing disability. If the losses of hearing average 92 decibels or more in the three frequencies, as measured under ISO Standard 1964, then the same shall constitute and be total or 100% compensable hearing loss.

(2) In measuring hearing impairment, the lowest measured losses in each of the three frequencies shall be added together and divided by three to determine the average decibel loss. For every decibel of loss exceeding 25 decibels, an allowance of 1 ½% shall be made up to the maximum of 100%, which is reached at 92 decibels.

(3) In determining the binaural percentage of loss, the percentage of impairment in the better ear shall be multiplied by five. The resulting figure shall be added to the percentage of impairment in the poorer ear and the sum of the two divided by six. The final percentage shall be representative of the binaural hearing impairment.

(4) Before determining the percentage of hearing impairment, in order to allow for the average amount of hearing loss from nonoccupational causes found in the population at any given age, there shall be deducted from the total average decibel loss one-half decibel for each year of the employee's age over 40 at the time of last exposure to industrial noise.

(5) No consideration shall be given to the question of whether or not the ability of an employee to understand speech is improved by the use of a hearing aid.

History: En. 92-710 by Sec. 1, Ch. 366, L. 1971; amd. Sec. 1, Ch. 381, L. 1973; R.C.M. 1947, 92-710(1)(b) thru (f).

39-71-806. Disability payments not payable for temporary hearing loss due to prolonged exposure to noise. No benefits shall be payable for temporary total or temporary partial disability under this part for loss of hearing due to prolonged exposure to noise.

History: En. 92-710 by Sec. 1, Ch. 366, L. 1971; amd. Sec. 1, Ch. 381, L. 1973; R.C.M. 1947, 92-710(2).

39-71-807. Compensation for wage loss where employee transferred due to occupational deafness. An employee who because of occupational deafness is transferred by his employer to other employment and thereby sustains actual wage loss must be compensated at the rate provided in 39-71-703, not exceeding $3,500 in the aggregate from all employers. "Time of injury", "incurred such injury", or "date of injury" in such case is the date of wage loss.

History: En. 92-710 by Sec. 1, Ch. 366, L. 1971; amd. Sec. 1, Ch. 381, L. 1973; R.C.M. 1947, 92-710(3); amd. Sec. 71, Ch. 397, L. 1979.

39-71-808. Compensation for occupational deafness. (1) Subject to the limitations herein contained, there shall be payable:

(a) for total occupational deafness of one ear, 40 weeks of compensation;

(b) for total occupational deafness of both ears, 200 weeks of compensation; and

(c) for partial occupational deafness, compensation shall bear such relation to that named herein as disabilities bear to the maximum disabilities herein provided.

(2) In cases covered by this section, "time of injury", "incurred such injury", or "date of injury" shall be exclusively the date of occurrence of any of the following events to an employee:

(a) transfer because of occupational deafness to nonnoisy employment by an employer whose employment has caused occupational deafness;

(b) retirement;

(c) termination of the employer-employee relationship;

(d) layoff provided the layoff is complete and continuous for 1 year.

(3) No claim under this section shall be filed, however, until 6 consecutive months of removal from noisy employment after the time of injury, except that under subsection (2)(d), such 6 consecutive months period may commence within the last 6 months of layoff.

History: En. 92-710 by Sec. 1, Ch. 366, L. 1971; amd. Sec. 1, Ch. 381, L. 1973; R.C.M. 1947, 92-710(4).

39-71-809. Liability of employer for occupational deafness. An employer shall become liable for the entire occupational deafness to which his employment has contributed; but if previous deafness is established by hearing test or other competent evidence, whether or not the employee was exposed to noise within the 6 months preceding such test, he shall not be liable for previous loss so established nor shall he be liable for any loss for which compensation has previously been paid or awarded.

History: En. 92-710 by Sec. 1, Ch. 366, L. 1971; amd. Sec. 1, Ch. 381, L. 1973; R.C.M. 1947, 92-710(9).

39-71-810. Employee to have worked ninety days for employer from whom compensation claimed. No payment shall be made to an employee under this part unless he shall have worked in noisy employment for a total period of at least 90 days for the employer from whom he claims compensation.

History: En. 92-710 by Sec. 1, Ch. 366, L. 1971; amd. Sec. 1, Ch. 381, L. 1973; R.C.M. 1947, 92-710(6).

39-71-811. Minimum exposure and noise intensity level required. No claim shall be filed, however, unless the employee is exposed 8 hours daily and for a period of at least 90 days as above required to noise intensity levels above 90 decibels.

History: En. 92-710 by Sec. 1, Ch. 366, L. 1971; amd. Sec. 1, Ch. 381, L. 1973; R.C.M. 1947, 92-710(10).

39-71-812. Limitation on amount of compensation payable to employee under part. Any amount paid to an employee under this part by an employer shall be credited against compensation payable by any employer to such employee for occupational deafness under 39-71-807 and 39-71-808. No employee shall in the aggregate receive greater compensation from any or all employers for occupational deafness than that provided in this part for total occupational deafness.

History: En. 92-710 by Sec. 1, Ch. 366, L. 1971; amd. Sec. 1, Ch. 381, L. 1973; R.C.M. 1947, 92-710(7).

39-71-813. Limitation provisions applicable — when provisions begin to run. The limitation provisions in this chapter control claims arising under this part. Such provisions run from the first date upon which claim may be filed or from the date of subsequent death, provided that no claim may accrue to any dependent unless an award has been issued or liability admitted.

History: En. 92-710 by Sec. 1, Ch. 366, L. 1971; amd. Sec. 1, Ch. 381, L. 1973; R.C.M. 1947, 92-710(5); amd. Sec. 72, Ch. 397, L. 1979.

Part 9

Subsequent Injury Received by Vocationally Handicapped

Part Cross-References

Definitions, 39-71-116, 39-71-901.
Employer defined, 39-71-117.
Employee defined, 39-71-118.
Injury defined, 39-71-119.

39-71-901. Definitions. As used in this part, the following definitions apply:

(1) "Certificate" means documentation issued by the department to an individual who is a person with a disability.

(2) "Fund" means the subsequent injury fund in the proprietary fund category.

(3) "Person with a disability" means a person who has a medically certifiable permanent impairment that is a substantial obstacle to obtaining employment or to obtaining reemployment if the employee should become unemployed, considering such factors as the person's age, education, training, experience, and employment rejection.

History: En. 92-709.1 by Sec. 1, Ch. 254, L. 1973; R.C.M. 1947, 92-709.1(1); amd. Sec. 10, Ch. 103, L. 1979; amd. Sec. 73, Ch. 397, L. 1979; amd. Sec. 24, Ch. 613, L. 1989; amd. Sec. 40, Ch. 472, L. 1997; amd. Sec. 19, Ch. 389, L. 1999.

Compiler's Comments

1999 Amendment: Chapter 389 in definition of fund inserted "in the proprietary fund category". Amendment effective July 1, 1999.

39-71-902. Repealed. Sec. 7, Ch. 284, L. 1997.

History: En. 92-709.1 by Sec. 1, Ch. 254, L. 1973; R.C.M. 1947, 92-709.1(part); amd. Sec. 74, Ch. 397, L. 1979; amd. Sec. 64, Ch. 613, L. 1989; amd. Sec. 8, Ch. 555, L. 1993; amd. Sec. 17, Ch. 516, L. 1995.

39-71-903. Procedure. When a person with a disability receives an injury, as defined in 39-71-119, the procedure provided in this chapter applies to all proceedings under this part, except when specifically otherwise provided.

History: En. 92-709.1 by Sec. 1, Ch. 254, L. 1973; R.C.M. 1947, 92-709.1(part); amd. Sec. 75, Ch. 397, L. 1979; amd. Sec. 4, Ch. 284, L. 1997; amd. Sec. 41, Ch. 472, L. 1997.

39-71-904. Rules for certification. The department shall promulgate rules for certification of persons with disabilities.

History: En. 92-709.1 by Sec. 1, Ch. 254, L. 1973; R.C.M. 1947, 92-709.1(4); amd. Sec. 64, Ch. 613, L. 1989; amd. Sec. 42, Ch. 472, L. 1997.

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

39-71-905. Certification as person with a disability. A person who wishes to be certified as a person with a disability for purposes of this part shall apply to the department on forms furnished by the department. The department shall conduct an investigation and shall issue a certificate to a person who, in the department's discretion, meets the requirements for certification. A person shall apply for certification before employment or within 60 days after the person becomes employed or reemployed and before an injury occurs that is covered by this part. The certification is effective on the date of employment or reemployment. Certification is effective on the date the application is approved for a person who applies for certification more than 60 days after employment or reemployment, but before an injury occurs.

History: En. 92-709.1 by Sec. 1, Ch. 254, L. 1973; R.C.M. 1947, 92-709.1(2); amd. Sec. 11, Ch. 103, L. 1979; amd. Sec. 1, Ch. 151, L. 1987; amd. Sec. 64, Ch. 613, L. 1989; amd. Sec. 8, Ch. 558, L. 1991; amd. Sec. 43, Ch. 472, L. 1997; amd. Sec. 15, Ch. 377, L. 1999.

Compiler's Comments

1999 Amendment: Chapter 377 deleted former last sentence that read: "Failure to apply before employment or within 60 days after employment or reemployment precludes the employer from the protection and benefits of this part" and inserted last sentence authorizing certification of disability on date application approved if application made more than 60 days after employment or reemployment; and made minor changes in style. Amendment effective July 1, 1999.

39-71-906. Employer hiring or retaining certified person with a disability to file information with department — effect of failure to file. Upon commencement of employment or retention in employment of a certified person with a disability, the employer shall submit to the department, on forms furnished by the department, all pertinent information requested by the department. The department shall acknowledge receipt of the information. Failure to file the required information with the department within 60 days after the first day of the person's employment or retention in employment precludes the employer from the protection and benefits of this part unless the information is filed before an injury for which benefits are payable under this part.

History: En. 92-709.1 by Sec. 1, Ch. 254, L. 1973; R.C.M. 1947, 92-709.1(3); amd. Sec. 12, Ch. 103, L. 1979; amd. Sec. 64, Ch. 613, L. 1989; amd. Sec. 44, Ch. 472, L. 1997.

Cross-References

Persons with disabilities public employment preference, Title 39, ch. 30.

39-71-907. Certified person with a disability to be compensated for injury as provided by chapter — insurer liability for compensation limited. A person certified as having a physical or mental disability that constitutes or results in a substantial impediment to employment who receives an injury, as defined in 39-71-119, that results in death or disability must be paid compensation in the manner and to the extent provided in this chapter or, in case of death resulting from the injury, the compensation must be paid to the person's beneficiaries or dependents. The liability of the insurer for payment of medical and burial benefits as provided in this chapter is limited to those benefits arising from services rendered during the period of 104 weeks after the date of injury. The liability of the insurer for payment of benefits as provided in this chapter is limited to 104 weeks of compensation benefits actually paid. Thereafter, all compensation and the cost of all medical care and burial are the liability of the fund.

History: **En. 92-709.1 by Sec. 1, Ch. 254, L. 1973; R.C.M. 1947, 92-709.1(5); amd. Sec. 76, Ch. 397, L. 1979; amd. Sec. 1, Ch. 213, L. 1987; amd. Sec. 9, Ch. 555, L. 1993; amd. Sec. 5, Ch. 284, L. 1997; amd. Sec. 45, Ch. 472, L. 1997; amd. Sec. 20, Ch. 389, L. 1999.**

Compiler's Comments

1999 Amendment: Chapter 389 deleted former (2) that read: "(2) The amounts necessary for the payment of benefits from this fund are statutorily appropriated, as provided in 17-7-502, from this fund"; and made minor changes in style. Amendment effective July 1, 1999.

39-71-908. Notification of fund of its potential liability under part — review by fund. Not less than 90 or more than 150 days before the expiration of 104 weeks after the date of injury, the insurer shall notify the fund whether it is likely that compensation may be payable beyond a period of 104 weeks after the date of the injury. The fund thereafter may review, at reasonable times, such information as the insurer has regarding the accident and the nature and extent of the injury and disability.

History: **En. 92-709.1 by Sec. 1, Ch. 254, L. 1973; R.C.M. 1947, 92-709.1(part); amd. Sec. 77, Ch. 397, L. 1979; amd. Sec. 25, Ch. 613, L. 1989.**

39-71-909. Effect of fund's failure to give notification of its intent to dispute liability — subsequent notification by fund authorized. If the fund does not notify the insurer of its intent to dispute the payment of compensation, medical, and burial benefits, the insurer shall continue to make payments on behalf of the fund and shall be reimbursed by the fund for all benefits paid in excess of the insurer's liability. However, at any time subsequent to 104 weeks after the date of injury, the fund may notify the insurer of a dispute as to payment of benefits. The liability of the fund to reimburse the insurer shall be suspended 30 days thereafter until the controversy is determined.

History: **En. 92-709.1 by Sec. 1, Ch. 254, L. 1973; R.C.M. 1947, 92-709.1(7); amd. Sec. 2, Ch. 213, L. 1987.**

39-71-910. Repealed. Sec. 7, Ch. 284, L. 1997.

History: **En. 92-709.1 by Sec. 1, Ch. 254, L. 1973; R.C.M. 1947, 92-709.1(9) thru (12); amd. Sec. 78, Ch. 397, L. 1979; amd. Secs. 26, 64, Ch. 613, L. 1989.**

39-71-911. Obligation to make payments on behalf of fund not an independent liability. The obligation imposed by this part on the insurer to make payments on behalf of the fund does not impose an independent liability on the insurer.

History: **En. 92-709.1 by Sec. 1, Ch. 254, L. 1973; R.C.M. 1947, 92-709.1(part); amd. Sec. 27, Ch. 613, L. 1989.**

39-71-912. Reimbursement to be promptly made. After the right to reimbursement has been established, reimbursement payment shall be made promptly on a proper showing every 6 months.

History: **En. 92-709.1 by Sec. 1, Ch. 254, L. 1973; R.C.M. 1947, 92-709.1(part).**

39-71-913. Repealed. Sec. 7, Ch. 284, L. 1997.

History: **En. 92-709.1 by Sec. 1, Ch. 254, L. 1973; R.C.M. 1947, 92-709.1(part); amd. Sec. 28, Ch. 613, L. 1989.**

39-71-914. Repealed. Sec. 68, Ch. 464, L. 1987.

History: En. 92-709.1 by Sec. 1, Ch. 254, L. 1973; R.C.M. 1947, 92-709.1(part).

39-71-915. *(Temporary)* **Assessment of insurers — definition.** (1) As used in this section, "paid losses" means the following benefits paid during the preceding calendar year for injuries covered by the Montana Workers' Compensation Act without regard to the application of any deductible regardless of whether the employer or the insurer pays the losses:

(a) total compensation benefits paid; and

(b) except for medical benefits in excess of $200,000 per occurrence that are exempt from assessment, total medical benefits paid for medical treatment rendered to an injured worker, including hospital treatment and prescription drugs.

(2) The fund must be maintained by assessing each plan No. 1 employer, each plan No. 2 insured employer, and plan No. 3, the state fund. The assessment amount is the total amount of paid losses reimbursed from the fund in the preceding calendar year and the expenses of administration less other income. The total assessment amount collected must be allocated among plan No. 1 employers, plan No. 2 insured employers, and plan No. 3, the state fund, based on paid losses for the calendar year preceding the year in which the assessment is collected. The board of investments shall invest the money of the fund, and the investment income must be deposited in the fund.

(3) On or before March 31 each year, the department shall notify each plan No. 1 employer, plan No. 2 insurer, and plan No. 3, the state fund, of the amount to be assessed against the employer or the state fund for that calendar year. On or before March 31 each year, the department, in consultation with the advisory organization designated under 33-16-1023, shall notify plan No. 2 insurers of the premium surcharge rate to be effective for policies written or renewed on and after January 1 in that calendar year.

(4) The portion of the plan No. 1 assessment assessed against an individual plan No. 1 employer is a proportionate amount of total plan No. 1 paid losses during the preceding calendar year that is equal to the percentage that the total paid losses of the individual plan No. 1 employer bore to the total paid losses of all plan No. 1 employers during the preceding calendar year.

(5) The portion of the plan No. 2 assessment subject to premium surcharge for an individual plan No. 2 insured employer is a proportionate amount of total plan No. 2 paid losses during the preceding calendar year that is equal to the percentage that the total paid losses of the individual plan No. 2 insured employer bore to the total paid losses of all plan No. 2 insurers during the preceding calendar year.

(6) Payment of assessments due must be made to the department semiannually on June 30 and December 31 of the year following the calendar year on which the assessment is based.

(7) Each plan No. 2 insurer providing workers' compensation insurance may collect from each of its policyholders an amount equal to the insured employer's fund assessment through a surcharge based on premium. When collected, assessments may not constitute an element of loss for the purpose of establishing rates for workers' compensation insurance but, for the purpose of collection, must be treated as separate costs imposed upon insured employers.

The total of this assessment must be stated as a separate cost on an insured employer's policy or on a separate document submitted by the insured employer and must be identified as "workers' compensation policyholder surcharge". Each assessment must be shown as a percentage of the total workers' compensation policyholder premium. The premium surcharge must be collected at the same time and in the same manner that the premium for the coverage is collected. The premium surcharge must be excluded from the definition of premiums for all purposes, including computation of insurance producers' commissions or premium taxes, except that an insurer may cancel a workers' compensation policy for nonpayment of the premium surcharge. Cancellation must be in accordance with the procedures applicable to the nonpayment of premium.

(8) All assessments paid to the department must be deposited in the fund.

39-71-915. *(Effective July 1, 2000)* **Assessment of insurers — definition.** (1) As used in this section, "paid losses" means the following benefits paid during the preceding calendar year for injuries covered by the Montana Workers' Compensation Act without regard to the application of any deductible regardless of whether the employer or the insurer pays the losses:

(a) total compensation benefits paid; and

(b) except for medical benefits in excess of $200,000 per occurrence that are exempt from assessment, total medical benefits paid for medical treatment rendered to an injured worker, including hospital treatment and prescription drugs.

(2) The fund must be maintained by assessing each plan No. 1 employer, each plan No. 2 insurer, and plan No. 3, the state fund. The assessment amount is the total amount of paid losses reimbursed from the fund in the preceding calendar year and the expenses of administration less other income. The total assessment amount collected must be allocated among plan No. 1 employers, plan No. 2 insurers, and plan No. 3, the state fund, based on paid losses for the calendar year preceding the year in which the assessment is collected. The board of investments shall invest the money of the fund, and the investment income must be deposited in the fund.

(3) On or before March 31 each year, the department shall notify each plan No. 1 employer, plan No. 2 insurer, and plan No. 3, the state fund, of the amount to be assessed against the employer, plan No. 2 insurer, or the state fund for that calendar year. On or before March 31 each year, the department, in consultation with the advisory organization designated under 33-16-1023, shall notify plan No. 2 insurers and plan No. 3 of the premium surcharge rate to be effective for policies written or renewed on and after July 1 in that year.

(4) The portion of the plan No. 1 assessment assessed against an individual plan No. 1 employer is a proportionate amount of total plan No. 1 paid losses during the preceding calendar year that is equal to the percentage that the total paid losses of the individual plan No. 1 employer bore to the total paid losses of all plan No. 1 employers during the preceding calendar year.

(5) The portion of the plan No. 2 assessment subject to premium surcharge for an individual plan No. 2 insured employer is a proportionate amount of total plan No. 2 paid losses during the preceding calendar year that is equal to the percentage that the total paid losses of the individual plan No. 2 insured

employer bore to the total paid losses of all plan No. 2 insurers during the preceding calendar year.

(6) The portion of the state fund assessment subject to premium surcharge for a state fund insured employer is a proportionate amount of total state fund paid losses during the preceding calendar year that is equal to the percentage that the total paid losses of the individual state fund insured employer bore to the total paid losses of state fund insured employers during the preceding calendar year.

(7) Payment of assessments due must be made to the department semiannually on June 30 and December 31 of the year following the calendar year on which the assessment is based.

(8) Each plan No. 2 insurer providing workers' compensation insurance and plan No. 3, the state fund, shall collect from its policyholders the assessment in subsection (2). When collected, assessments may not constitute an element of loss for the purpose of establishing rates for workers' compensation insurance but, for the purpose of collection, must be treated as separate costs imposed upon insured employers. The total of this assessment must be stated as a separate cost on an insured employer's policy or on a separate document submitted by the insured employer and must be identified as "workers' compensation subsequent injury fund surcharge". Each assessment must be shown as a percentage of the total workers' compensation policyholder premium. This premium surcharge must be collected at the same time and in the same manner that the premium for the coverage is collected. The premium surcharge must be excluded from the definition of premiums for all purposes, including computation of insurance producers' commissions or premium taxes, except that an insurer may cancel a workers' compensation policy for nonpayment of the premium surcharge. Cancellation must be in accordance with the procedures applicable to the nonpayment of premium.

(9) All assessments paid to the department must be deposited in the fund.

History: En. Sec. 1, Ch. 284, L. 1997; amd. Sec. 16, Ch. 377, L. 1999.

Compiler's Comments

1999 Amendment: Chapter 377 in (2) in two places substituted reference to plan No. 2 insurer for reference to plan No. 2 insured employer; in (3) in first sentence after "employer" inserted "plan No. 2 insurer" and in second sentence after "plan No. 2 insurers" inserted "and plan No. 3" and at end substituted "after July 1 in that year" for "after January 1 in that calendar year"; inserted (6) establishing calculation method for portion of state fund assessment subject to premium surcharge for state fund insured employer; in (8) in first sentence after "insurance" inserted "and plan No. 3, the state fund" and at end substituted "shall collect from its policyholders the assessment in subsection (2)" for "may collect from each of its policyholders an amount equal to the insured employer's fund assessment through a surcharge based on premium" and near end of third sentence substituted "workers' compensation subsequent injury fund surcharge" for "workers' compensation policyholder surcharge"; and made minor changes in style. Amendment effective July 1, 2000.

Part 10

Referral of Disabled Workers for Vocational Rehabilitation

Part Cross-References

Definitions, 39-71-116.

Employer defined, 39-71-117.

Employee defined, 39-71-118.

Injury defined, 39-71-119.

39-71-1001. Repealed. Sec. 68, Ch. 464, L. 1987.

History: En. Sec. 1, Ch. 21, L. 1961; amd. Sec. 1, Ch. 221, L. 1963; amd. Sec. 83, Ch. 23, L. 1975; R.C.M. 1947, 92-1401; amd. Sec. 79, Ch. 397, L. 1979.

39-71-1002. Repealed. Sec. 68, Ch. 464, L. 1987.

History: En. Sec. 2, Ch. 21, L. 1961; amd. Sec. 84, Ch. 23, L. 1975; R.C.M. 1947, 92-1402.

39-71-1003. Payment for vocational rehabilitation expenses for injuries occurring on or before June 30, 1997. For injuries occurring on or before June 30, 1997, a disabled worker may be paid vocational rehabilitation expenses from funds provided in 39-71-1004, in addition to benefits payable under the Workers' Compensation Act.

History: En. Sec. 3, Ch. 21, L. 1961; amd. Sec. 1, Ch. 363, L. 1971; R.C.M. 1947, 92-1403; amd. Sec. 80, Ch. 397, L. 1979; amd. Sec. 3, Ch. 374, L. 1985; amd. Sec. 35, Ch. 464, L. 1987; amd. Sec. 7, Ch. 574, L. 1991; amd. Sec. 106, Ch. 546, L. 1995; amd. Sec. 1, Ch. 122, L. 1997.

39-71-1004. Industrial accident rehabilitation account. (1) The payments provided in 39-71-1003 must be made from the industrial accident rehabilitation account in the state special revenue fund. Payments to the account must be made each year upon an assessment by the department as follows:

(a) by each employer operating under the provisions of plan No. 1 of the Workers' Compensation Act, an amount to be assessed by the department, not exceeding 1% of the compensation paid to the employer's injured employees in Montana for the preceding calendar year;

(b) by each insurer insuring employers under the provisions of plan No. 2 of the Workers' Compensation Act, an amount to be assessed by the department, not exceeding 1% of the compensation paid to injured employees of its insured in Montana during the preceding calendar year;

(c) by the state fund, an amount to be assessed by the department, not exceeding 1% of the compensation paid by the state fund to injured employees in Montana during the preceding calendar year.

(2) Separate accounts of the amounts that were collected and disbursements that were made from the industrial accident rehabilitation account in the state special revenue fund must be kept for each of the plans. If in any fiscal year the amount that was collected from the employers under any plan exceeds the amount of payments for employees of the employers under the plan, the assessment against the employers under the plan for the following year must be reduced.

(3) The payments provided for in this section must be made to the department, which shall credit the sums paid to the industrial accident rehabilitation account in the custody of the state treasurer. Disbursements from the account must be made after approval by the department.

(4) The funds allocated or contributed as provided in this section may not be used for payment of administrative expenses of the department.

(5) The methods and processes used to disburse rehabilitation expense payments to eligible disabled workers are procedural and do not affect the substantive rights of those disabled workers.

History: En. Sec. 7, Ch. 21, L. 1961; amd. Sec. 3, Ch. 221, L. 1963; amd. Sec. 85, Ch. 23, L. 1975; R.C.M. 1947, 92-1406; amd. Sec. 2, Ch. 283, L. 1983; amd. Sec. 64, Ch. 613, L.

1989; amd. Sec. 107, Ch. 546, L. 1995; amd. Sec. 2, Ch. 122, L. 1997; amd. Sec. 17, Ch. 377, L. 1999.

Compiler's Comments

1999 Amendment: Chapter 377 near end of (1)(a), (1)(b), and (1)(c) substituted "preceding calendar year" for "preceding fiscal year". Amendment effective July 1, 1999.

39-71-1005. Repealed. Sec. 68, Ch. 464, L. 1987.

History: En. Sec. 1, Ch. 123, L. 1979.

39-71-1006. Rehabilitation benefits. (1) A worker is eligible for rehabilitation benefits if:

(a) (i) the worker meets the definition of a disabled worker as provided in 39-71-1011; or

(ii) the worker has, as a result of the work-related injury, a whole person impairment rating of 15% or greater, as established by objective medical findings, and has no actual wage loss;

(b) a rehabilitation provider, as designated by the insurer, certifies that the worker has reasonable vocational goals and reasonable reemployment opportunity. If eligible because of an impairment rating of 15% or more, with rehabilitation the worker will have a reasonable increase in the worker's wage compared to the wage that the worker received at the time of injury. If eligible because of a wage loss, the worker will have a reasonable reduction in the worker's actual wage loss with rehabilitation.

(c) a rehabilitation plan is agreed upon by the worker and the insurer and a written copy of the plan is provided to the worker. The plan must take into consideration the worker's age, education, training, work history, residual physical capacities, and vocational interests. The plan must specify a beginning date and a completion date. The plan must specify the cost of tuition, fees, books, and other reasonable and necessary retraining expenses required to complete the plan.

(2) A disabled worker is entitled to receive biweekly compensation benefits at the worker's temporary total disability rate. The benefits must be paid for the period specified in the rehabilitation plan, not to exceed 104 weeks. The rehabilitation plan must be completed within 26 weeks of the completion date specified in the plan. Rehabilitation benefits must be paid biweekly while the worker is satisfactorily progressing in the agreed-upon rehabilitation plan. Benefits under this section are not subject to the lump-sum provisions of 39-71-741.

(3) In addition to rehabilitation benefits payable under subsection (2), a disabled worker who was injured on or after July 1, 1997, is entitled to receive payment for tuition, fees, books, and other reasonable and necessary retraining expenses, excluding travel and living expenses paid pursuant to the provisions of 39-71-1025, as set forth in department rules and as specified in the rehabilitation plan. Expenses must be paid directly by the insurer.

(4) A worker may not receive temporary total benefits and the benefits under subsection (2) during the same period of time.

(5) A rehabilitation provider authorized by the insurer shall continue to assist the injured worker until the rehabilitation plan is completed.

(6) To be eligible for benefits under this section, a worker is required to begin the rehabilitation plan within 78 weeks of reaching maximum medical healing.

(7) A worker may not receive both wages and rehabilitation benefits without the written consent of the insurer. A worker who receives both wages and rehabilitation benefits without written consent of the insurer is guilty of theft and may be prosecuted under 45-6-301.

History: En. Sec. 10, Ch. 574, L. 1991; amd. Sec. 7, Ch. 296, L. 1993; amd. Sec. 24, Ch. 243, L. 1995; amd. Sec. 111, Ch. 546, L. 1995; Sec. 39-71-2001, MCA 1993; redes. 39-71-1006 by Code Commissioner, 1995; amd. Sec. 3, Ch. 122, L. 1997; amd. Sec. 14, Ch. 276, L. 1997.

39-71-1007 through 39-71-1010 reserved.

39-71-1011. Definitions. As used in this chapter, the following definitions apply:

(1) "Board of rehabilitation certification" means the nonprofit, independent, fee-structured organization that is a member of the national commission for health certifying agencies and that is established to certify rehabilitation practitioners.

(2) "Disabled worker" means a worker who has a permanent impairment, established by objective medical findings, resulting from a work-related injury that precludes the worker from returning to the job the worker held at the time of the injury or to a job with similar physical requirements and who has an actual wage loss as a result of the injury.

(3) "Rehabilitation benefits" means benefits provided in 39-71-1006 and 39-71-1025.

(4) "Rehabilitation plan" means a written individualized plan that assists a disabled worker in acquiring skills or aptitudes to return to work through job placement, on-the-job training, education, training, or specialized job modification and that reasonably reduces the worker's actual wage loss.

(5) "Rehabilitation provider" means a rehabilitation counselor certified by the board for rehabilitation certification and designated by the insurer.

(6) "Rehabilitation services" means a program of evaluation, planning, and implementation of a rehabilitation plan to assist a disabled worker to return to work.

History: En. Sec. 34, Ch. 464, L. 1987; amd. Sec. 2, Ch. 333, L. 1989; amd. Sec. 64, Ch. 613, L. 1989; amd. Sec. 8, Ch. 574, L. 1991; amd. Sec. 22, Ch. 243, L. 1995; amd. Sec. 108, Ch. 546, L. 1995; amd. Sec. 4, Ch. 122, L. 1997.

39-71-1012. Repealed. Sec. 14, Ch. 574, L. 1991.

History: En. Sec. 36, Ch. 464, L. 1987.

39-71-1013. Repealed. Sec. 8, Ch. 122, L. 1997; Sec. 13, Ch. 310, L. 1997.

History: En. Sec. 43, Ch. 464, L. 1987; amd. Sec. 9, Ch. 574, L. 1991.

39-71-1014. Rehabilitation services — required and provided by insurers. (1) Rehabilitation services are required for disabled workers and may be initiated by:

(a) an insurer by designating a rehabilitation provider; or

(b) a disabled worker through a request to the department. The department shall then require the insurer to designate a rehabilitation provider.

(2) Rehabilitation services provided under this part must be delivered through a rehabilitation counselor certified by the board of rehabilitation certification.

History: **En. Sec. 37, Ch. 464, L. 1987; amd. Sec. 64, Ch. 613, L. 1989; amd. Sec. 109, Ch. 546, L. 1995; amd. Sec. 5, Ch. 122, L. 1997.**

39-71-1015 through 39-71-1019. **Repealed.** Sec. 14, Ch. 574, L. 1991.

Compiler's Comments

Histories of Repealed Sections:

39-71-1015. En. Sec. 38, Ch. 464, L. 1987; amd. Sec. 64, Ch. 613, L. 1989.

39-71-1016. En. Sec. 39, Ch. 464, L. 1987; amd. Sec. 64, Ch. 613, L. 1989.

39-71-1017. En. Sec. 40, Ch. 464, L. 1987; amd. Sec. 9, Ch. 333, L. 1989; amd. Sec. 64, Ch. 613, L. 1989.

39-71-1018. En. Sec. 41, Ch. 464, L. 1987; amd. Sec. 64, Ch. 613, L. 1989.

39-71-1019. En. Sec. 42, Ch. 464, L. 1987; amd. Sec. 64, Ch. 613, L. 1989; amd. Sec. 40, Ch. 16, L. 1991.

39-71-1020 through 39-71-1022 reserved.

39-71-1023. **Repealed.** Sec. 14, Ch. 574, L. 1991.

History: **En. Sec. 44, Ch. 464, L. 1987; amd. Sec. 3, Ch. 333, L. 1989; amd. Sec. 64, Ch. 613, L. 1989.**

39-71-1024. **Repealed.** Sec. 14, Ch. 574, L. 1991.

History: **En. Sec. 45, Ch. 464, L. 1987; amd. Sec. 64, Ch. 613, L. 1989; amd. Sec. 9, Ch. 9, Sp. L. June 1989.**

39-71-1025. **Auxiliary rehabilitation benefits.** In addition to benefits otherwise provided in this chapter, separate benefits not exceeding a total of $4,000 may be paid by the insurer for reasonable travel and relocation expenses used to:

(1) search for new employment;

(2) return to work but in a new location;

(3) implement a rehabilitation plan that has been filed with the department; and

(4) attend an on-the-job training program.

History: **En. Sec. 46, Ch. 464, L. 1987; amd. Sec. 64, Ch. 613, L. 1989; amd. Sec. 11, Ch. 574, L. 1991.**

39-71-1026. **Repealed.** Sec. 14, Ch. 574, L. 1991.

History: **En. Sec. 47, Ch. 464, L. 1987; amd. Sec. 64, Ch. 613, L. 1989.**

39-71-1027 through 39-71-1030 reserved.

39-71-1031. **Exchange of information.** The insurer's designated rehabilitation provider and the department shall provide to one another case information as necessary to carry out the purposes of this part.

History: **En. Sec. 48, Ch. 464, L. 1987; amd. Sec. 64, Ch. 613, L. 1989; amd. Sec. 110, Ch. 546, L. 1995; amd. Sec. 6, Ch. 122, L. 1997.**

39-71-1032. **Termination of benefits for noncooperation with rehabilitation provider — appeal.** (1) If an insurer believes that a worker is refusing unreasonably to cooperate with the rehabilitation provider, the insurer, with 14 days' written notice to the worker and the department, may terminate any benefits, except medical benefits and the impairment award, that the worker is receiving until the worker cooperates.

(2) If the worker disputes the termination of benefits, the worker may, after mediation pursuant to department rule, petition the workers' compensation court for resolution of the dispute.

History: **En. Sec. 49, Ch. 464, L. 1987; amd. Sec. 64, Ch. 613, L. 1989; amd. Sec. 12, Ch. 574, L. 1991; amd. Sec. 23, Ch. 243, L. 1995; amd. Sec. 7, Ch. 122, L. 1997; amd. Sec. 20, Ch. 442, L. 1999.**

Compiler's Comments

1999 Amendment: Chapter 442 substituted (2) concerning dispute over termination of benefits for former text that read: "(2) The worker may contest the insurer's termination of benefits by filing a written exception to the department within 20 working days after the date of the 14-day notice. The worker or insurer may request a hearing before the department. The department shall hold a hearing within 30 days of receipt of the request. The department shall issue an order within 15 days of the hearing"; and deleted former (3) and (4) that read: "(3) If the worker prevails at a hearing before the department, it may award attorney fees and costs to the worker under 39-71-612.

(4) Within 30 days after the department mails its order to the party's last-known address, a party may appeal to the workers' compensation court." Amendment effective April 23, 1999.

Retroactive Applicability: Section 31(1), Ch. 442, L. 1999, provided that this section applies retroactively, within the meaning of 1-2-109, to claims for injuries occurring before April 23, 1999, unless a party elects, after notification by the department of labor and industry, to remain in the contested case process.

39-71-1033. Repealed. Sec. 14, Ch. 574, L. 1991.

History: En. Sec. 50, Ch. 464, L. 1987; amd. Sec. 64, Ch. 613, L. 1989.

Part 11

Managed Care and Preferred Provider Organizations

39-71-1101. Choice of physician by worker — change of physician — receipt of care from managed care organization. (1) Subject to subsection (3), a worker may choose the initial treating physician within the state of Montana.

(2) Authorization by the insurer is required to change treating physicians. If authorization is not granted, the insurer shall direct the worker to a managed care organization, if any, or to a medical service provider who qualifies as a treating physician, who shall then serve as the worker's treating physician.

(3) A medical service provider who otherwise qualifies as a treating physician but who is not a member of a managed care organization may not provide treatment unless authorized by the insurer, if:

(a) the injury results in a total loss of wages for any duration;

(b) the injury will result in permanent impairment;

(c) the injury results in the need for a referral to another medical provider for specialized evaluation or treatment; or

(d) specialized diagnostic tests, including but not limited to magnetic resonance imaging, computerized axial tomography, or electromyography, are required.

(4) After the date that a worker whose injury is subject to the provisions of subsection (3) receives individual written notice of a referral to a managed care organization, the worker must, unless otherwise authorized by the insurer, receive medical services from the managed care organization designated by the insurer, in accordance with 39-71-1104. The designated treating physician in the managed care organization then becomes the worker's treating physician. The insurer is not liable for medical services obtained otherwise, except that a worker may receive immediate emergency medical treatment for a compensable injury from a medical service provider who is not a member of a managed care organization.

(5) Posting of managed care requirements in the workplace on bulletin boards, in personnel policies, in company manuals, or by other general or broadcast means does not constitute individual written notice. To constitute individual written notice under this section, information regarding referral to a managed care organization must be provided to the worker in written form by mail or in person after the date that the injury meets the provisions of subsection (3). The notice must advise the worker of the worker's right to choose the initial treating physician under subsection (1).

(6) Any postings or other information regarding referral to a managed care organization on bulletin boards, in personnel policies, in company manuals, or by other general or broadcast means and any individual notice of referral to a managed care organization, whether before or after the occurrence of an injury, must include in prominent type advice of the worker's right to choose the initial treating physician pursuant to subsection (1).

History: En. Sec. 5, Ch. 628, L. 1993; amd. Sec. 1, Ch. 468, L. 1999.

Compiler's Comments

1999 Amendment: Chapter 468 in (4) at beginning of first sentence inserted "After the date that" and after reference to subsection (3) inserted "receives individual written notice of a referral to a managed care organization, the worker"; inserted (5) providing that posting of managed care requirements in certain places is not individual written notice, which must be given in writing by mail or in person after the date that the injury meets the provisions of subsection (3) and which must advise the worker of the worker's right to choose the initial treating physician; inserted (6) providing that postings or other information as to referral to a managed care organization in certain places and individual notice of referral to a managed care organization must prominently include advice of the worker's right to choose the initial treating physician; and made minor changes in style. Amendment effective October 1, 1999.

39-71-1102. Preferred provider organizations — establishment — limitations. (1) In order to promote cost containment of medical care provided for in 39-71-704, development of preferred provider organizations by insurers is encouraged. Insurers may establish arrangements with suppliers of soft and durable medical goods and medical providers in addition to or in conjunction with managed care organizations. Workers' compensation insurers may contract with other entities to use the other entities' preferred provider organizations. After the date that an injured worker is given an individual written notice by the insurer of a preferred provider, the insurer is not liable for charges from nonpreferred providers. This section does not prohibit the worker from choosing the initial treating physician under 39-71-1101(1).

(2) Posting of preferred provider requirements in the workplace on bulletin boards, in personnel policies, in company manuals, or by other general or broadcast means does not constitute individual written notice. To constitute individual written notice under this section, information regarding referral to preferred providers must be provided to the worker in written form by mail or in person after the date of injury. The notice must advise the worker of the worker's right to choose the initial treating physician under 39-71-1101(1).

(3) Any postings or other information regarding referral to preferred providers on bulletin boards, in personnel policies, in company manuals, or by other general or broadcast means and any individual notice of referral to preferred providers, whether before or after the occurrence of an injury, must include in prominent type advice of the worker's right to choose the initial treating physician pursuant to subsection 39-71-1101(1).

History: En. Sec. 6, Ch. 628, L. 1993; amd. Sec. 2, Ch. 468, L. 1999.

Compiler's Comments

1999 Amendment: Chapter 468 in (1) in fourth sentence near beginning before "worker" inserted "injured" and after "given" inserted "an individual"; inserted (2) providing that posting of preferred provider requirements in certain places is not individual written notice, which must be given in writing by mail or in person after the date of injury and which must advise the worker of the worker's right to choose the initial treating physician; inserted (3) providing that postings or other information as to referral to preferred providers in certain places and individual notice of referral to a preferred provider must prominently include advice of the worker's right to choose the initial treating physician; and made minor changes in style. Amendment effective October 1, 1999.

39-71-1103. Workers' compensation managed care. (1) A managed care system is a program organized to serve the medical needs of injured workers in an efficient and cost-effective manner by managing the delivery of medical services for a defined population of injured workers, pursuant to 39-71-1101, through appropriate health care professionals.

(2) The department shall develop criteria pursuant to 39-71-1105 for certification of managed care organizations. The department may adopt rules for certification of managed care organizations.

(3) Insurers may contract with certified managed care organizations for medical services for injured workers. A worker who is subject to managed care may choose from managed care organizations in the worker's community that have a contract with the insurer responsible for the worker's medical services.

History: En. Sec. 7, Ch. 628, L. 1993.

39-71-1104. Managed care organizations — notification. Workers who are subject to managed care must receive medical services in the manner prescribed in the contract. Each contract must comply with the certification requirements provided in 39-71-1105. Insurers who contract with a managed care organization for medical services shall give written notice to workers of eligible service providers and shall give notice of the manner of receiving medical services.

History: En. Sec. 8, Ch. 628, L. 1993.

39-71-1105. Managed care organizations — application — certification. (1) A health care provider, a group of medical service providers, or an entity with a managed care organization may make written application to the department to become certified under this section to provide managed care to injured workers for injuries that are covered under this chapter or for occupational diseases that are covered under the Occupational Disease Act of Montana. However, this section does not authorize an organization that is formed, owned, or operated by a workers' compensation insurer or self-insured employer other than a health care provider to become certified to provide managed care. When a health care provider, a group of medical service providers, or an entity with a managed care organization is establishing a managed care organization and independent physical therapy practices exist in the community, the managed care organization is encouraged to utilize independent physical therapists as part of the managed care organization if the independent physical therapists agree to abide by all the applicable requirements for a managed care organization set forth in this section, in rules established by the department, and in the provisions of a managed care plan for which certification is being sought.

(2) Each application for certification must be accompanied by an application fee if prescribed by the department. A certificate is valid for the period prescribed by the department, unless it is revoked or suspended at an earlier date.

(3) The department shall establish by rule the form for the application for certification and the required information regarding the proposed plan for providing medical services. The information includes but is not limited to:

(a) a list of names of each individual who will provide services under the managed care plan, together with appropriate evidence of compliance with any licensing or certification requirements for that individual to practice in the state;

(b) names of the individuals who will be designated as treating physicians and who will be responsible for the coordination of medical services;

(c) a description of the times, places, and manner of providing primary medical services under the plan;

(d) a description of the times, places, and manner of providing secondary medical services, if any, that the applicants wish to provide; and

(e) satisfactory evidence of the ability to comply with any financial requirements to ensure delivery of service in accordance with the plan that the department may require.

(4) The department shall certify a group of medical service providers or an entity with a managed care organization to provide managed care under a plan if the department finds that the plan:

(a) proposes to provide coordination of services that meet quality, continuity, and other treatment standards prescribed by the department and will provide all primary medical services that may be required by this chapter in a manner that is timely and effective for the worker;

(b) provides appropriate financial incentives to reduce service costs and utilization without sacrificing the quality of services;

(c) provides adequate methods of peer review and service utilization review to prevent excessive or inappropriate treatment, to exclude from participation in the plan those individuals who violate these treatment standards, and to provide for the resolution of any medical disputes that may arise;

(d) provides for cooperative efforts by the worker, the employer, the rehabilitation providers, and the managed care organization to promote an early return to work for the injured worker;

(e) provides a timely and accurate method of reporting to the department necessary information regarding medical and health care service cost and utilization to enable the department to determine the effectiveness of the plan;

(f) authorizes workers to receive medical treatment from a primary care physician who is not a member of the managed care organization but who maintains the worker's medical records and with whom the worker has a documented history of treatment, if that primary care physician agrees to refer the worker to the managed care organization for any specialized treatment, including physical therapy, that the worker may require and if that primary care physician agrees to comply with all the rules, terms, and conditions regarding services performed by the managed care organization. As used in this subsection (f), "primary care physician" means a physician who is qualified to be a treating physician and who is a family practitioner, a general practitioner, an internal medicine practitioner, or a chiropractor.

(g) complies with any other requirements determined by department rule to be necessary to provide quality medical services and health care to injured workers.

(5) The department shall refuse to certify or may revoke or suspend the certification of a health care provider, a group of medical service providers, or an entity with a managed care organization to provide managed care if the department finds that:

(a) the plan for providing medical care services fails to meet the requirements of this section; and

(b) service under the plan is not being provided in accordance with the terms of a certified plan.

History: En. Sec. 9, Ch. 628, L. 1993.

39-71-1106. Compliance with medical treatment required — termination of compensation benefits for noncompliance. An insurer that provides 14 days' notice to the worker and the department may terminate any compensation benefits that the worker is receiving until the worker cooperates, if the insurer believes that the worker is unreasonably refusing:

(1) to cooperate with a managed care organization or treating physician;

(2) to submit to medical treatment recommended by the treating physician, except for invasive procedures; or

(3) to provide access to health care information to medical providers, the insurer, or an agent of the insurer.

History: En. Sec. 10, Ch. 628, L. 1993.

39-71-1107. Domiciliary care — requirements — evaluation. (1) Reasonable domiciliary care must be provided by the insurer:

(a) from the date the insurer knows of the employee's need for home medical services that results from an industrial injury;

(b) when the preponderance of credible medical evidence demonstrates that nursing care is necessary as a result of the accident and describes with a reasonable degree of particularity the nature and extent of duties to be performed;

(c) when the services are performed under the direction of the treating physician who, following a nursing analysis, prescribes the care on a form provided by the department;

(d) when the services rendered are of the type beyond the scope of normal household duties; and

(e) when subject to subsections (3) and (4), there is a means to determine with reasonable certainty the value of the services performed.

(2) When a worker suffers from a condition that requires domiciliary care, which results from the accident, and requires nursing care as provided for in Title 37, chapter 8, a licensed nurse shall provide the services.

(3) When a worker suffers from a condition that requires 24-hour care and that results from the accident but that requires domiciliary care other than as provided in Title 37, chapter 8, the care may be provided by a family member. The insurer's responsibility for reimbursement for the care is limited to no more than the daily statewide average medicaid reimbursement rate for the

current fiscal year for care in a nursing home. The insurer is not responsible for respite care.

(4) Domiciliary care by a family member that is necessary for a period of less than 24 hours a day may not exceed the prevailing hourly wage, and the insurer is not liable for more than 8 hours of care per day.

History: En. Sec. 11, Ch. 628, L. 1993.

39-71-1108. Physician self-referral prohibition. (1) Unless authorized by the insurer, a treating physician may not refer a claimant to a health care facility at which the physician does not directly provide care or services when the physician has an investment interest in the facility, unless there is a demonstrated need in the community for the facility and alternative financing is not available. The insurer or the claimant is not liable for charges incurred in violation of this section.

(2) Subsection (1) does not apply to care or services provided directly to an injured worker by a treating physician with an ownership interest in a managed care organization that has been certified by the department.

History: En. Sec. 12, Ch. 628, L. 1993; amd. Sec. 18, Ch. 516, L. 1995.

39-71-1109. Repealed. Sec. 13, Ch. 310, L. 1997.

History: En. Sec. 13, Ch. 628, L. 1993.

Parts 12 through 14 reserved

Part 15

Montana Safety Culture Act

39-71-1501. Short title. Section 2-15-1708 and this part may be cited as the "Montana Safety Culture Act".

History: En. Sec. 1, Ch. 295, L. 1993.

39-71-1502. Purpose. The purpose of 2-15-1708 and this part is to reduce the incidence of occupational injury and illness by promoting safety in the workplace in order to control the costs of claims for workers' compensation insurance. The creation of a safety culture requires employers to provide training and education to make safety awareness part of the requirement for each worker's satisfactory job performance and requires the department to promote safety awareness for the public through the education and preparation of each student for entrance into the labor market. A reduction in workplace injuries, illnesses, and deaths through enhanced safety on the job benefits the public as well as the employers and the employees by lowering both financial and physical costs. Ensuring immunity to insurers in the provision of safety consultation services encourages and promotes safety in the workplace and improves the relationship between employers and employees.

History: En. Sec. 2, Ch. 295, L. 1993.

39-71-1503. Safety consultation. (1) As used in 2-15-1708 and this part, "safety consultation services" means assistance rendered by an insurer to advise and aid an insured employer in the identification, evaluation, and control of existing and potential accidental and occupational health problems. The services may be delivered in person, by mail, or by telephone, based upon need.

(2) Safety consultation services include but are not limited to:

(a) surveys consisting of onsite identification and subsequent evaluation of exposures relative to employees, materials, equipment, work methods, processes, and facilities;

(b) recommendations expressed in the form of communications to an insured employer, with reference to control of exposures to occupational accident, injury, or illness and to improvement of safety programs and systems;

(c) training programs, including aids, programs, and materials made available to assist in the control of exposures;

(d) consultations to advise insured employers relative to risk, exposure, and experience in the insured employer's business;

(e) accident analysis consisting of review of reported accidents to determine cause and trends; and

(f) industrial hygiene services, including recognition, evaluation, and control of chemical, physical, and biological exposures.

History: En. Sec. 3, Ch. 295, L. 1993.

39-71-1504. Safety programs — educational activities. (1) To promote health and safety in places of employment in this state:

(a) each public or private employer shall establish and administer a safety program in accordance with rules adopted by the department pursuant to 39-71-1505; and

(b) the department, relying upon the support and assistance of concerned private entities or other governmental agencies, shall produce and distribute material to the schools of Montana and provide guest speakers intended to:

(i) educate students about the necessity for safe work practices;

(ii) prepare students to embark on accident-free careers; and

(iii) disseminate information promoting the reduction and control of the rate of incidence of workplace injuries or occupational disease.

(2) An employer who employs temporary workers shall include those workers in the employer's safety program. A temporary services contractor shall provide a safety program for employees not employed by other employers.

History: En. Sec. 4, Ch. 295, L. 1993.

39-71-1505. Rulemaking authority. The department shall adopt rules, including but not limited to rules that require:

(1) each employer to conduct an educational-based safety program, including but not limited to:

(a) a safety training program to provide:

(i) new employee general safety orientation;

(ii) job- or task-specific safety training; and

(iii) continuous refresher safety training, including periodic safety meetings;

(b) periodic hazard assessment, with corrective actions identified; and

(c) appropriate documentation of performance of the activities; and

(2) an employer of more than five employees to have a comprehensive and effective safety program, including but not limited to:

(a) subject to subsection (3), a safety committee composed of employee and employer representatives that holds regularly scheduled meetings;

(b) procedures of reporting and investigating all work-related incidents, accidents, injuries, and illnesses; and

(c) policies and procedures that assign specific safety responsibilities and safety performance accountability.

(3) The department may adopt rules authorizing :

(a) a plan No. 2 or plan No. 3 insurer to waive the requirement in subsection (2)(a) for a safety committee if the employer presents sufficient evidence of an effective written safety plan and has a satisfactory modification factor, if applicable, or has a low incident record of injuries; or

(b) the department to waive the requirement in subsection (2)(a) for a safety committee if a plan No. 1 insurer approved by the department presents sufficient evidence of an effective safety program, including a written safety plan. A waiver granted under this subsection (3)(b) to a member of the self-insurers guaranty fund must be made with the concurrence of the fund.

History: **En. Sec. 5, Ch. 295, L. 1993; amd. Sec. 1, Ch. 238, L. 1995.**

39-71-1506. Notification of safety consultation services available by insurer. To implement safety requirements, each insurer shall notify each insured employer of the type of safety consultation services available and the location where the safety consultation services may be requested.

History: **En. Sec. 6, Ch. 295, L. 1993.**

39-71-1507. Safety consultation services — safety program as provision of insurance contract or agreement. (1) Each insurer shall provide safety consultation services to each of its insured employers who request the assistance.

(2) The safety consultation services to be provided are within the discretion of the insurer but must include consideration of the hazard, experience, and size of the insured employer's operations.

(3) The insurer shall establish a system of priorities to use in responding to worksite safety consultation service requests, giving first priority to insured employers that have an unreasonably high actual or potential loss experience.

(4) Each insurer's insurance contract or agreement must require each insured employer to implement a safety program as part of the contract or agreement to provide workers' compensation coverage.

History: **En. Sec. 7, Ch. 295, L. 1993.**

Cross-References

Safety program requirement in workers' compensation policies, 33-15-318.

39-71-1508. Safety consultation services — insurer's exemption from civil liability — exceptions. (1) The furnishing of or the failure to furnish safety consultation services related to, in connection with, or incidental to a workers' compensation insurance contract or agreement to provide workers' compensation coverage does not subject the insurer or its agents, employees, or service contractors to liability for damages from injury, loss, or death, whether direct or consequential, occurring as a result of any act or omission by any person in the course of providing safety consultation services.

(2) Subsection (1) does not apply:

(a) if the injury, loss, or death occurred during the actual performance of safety consultation services and was directly and proximately caused by the negligence of the insurer or its agents, employees, or service contractors;

(b) to any safety consultation services required to be performed under the provisions of a written service contract for which a specific charge is made and not incidental to a policy of insurance; or

(c) in an action against an insurer or its agents, employees, or service contractors for damages caused by the act or omission of the insurer or its agents, employees, or service contractors in which it is judicially determined that the act or omission constituted a crime or involved actual malice.

History: En. Sec. 9, Ch. 295, L. 1993.

Parts 16 through 19 reserved

Part 20

Rehabilitation Benefits (Renumbered by Code Commissioner, 1995)

39-71-2001. Renumbered 39-71-1006 by Code Commissioner, 1995.

Part 21

Compensation Plan Number One

Part Cross-References

Definitions, 39-71-116.

Employer defined, 39-71-117.

Employee defined, 39-71-118.

Injury defined, 39-71-119.

39-71-2101. General requirements for electing coverage under plan. (1) An employer may elect to be bound by compensation plan No. 1 upon furnishing satisfactory proof to the department and the Montana self-insurers guaranty fund of solvency and financial ability to pay the compensation and benefits provided for in this chapter and to discharge all liabilities that are reasonably likely to be incurred during the fiscal year for which the election is effective. The employer may, by order of the department and with the concurrence of the guaranty fund, make the payments directly to employees as they become entitled to receive payments under the terms and conditions of this chapter.

(2) Employers who comply with the provisions of this chapter and who are participating in collectively bargained, jointly administered Taft-Hartley trust funds are eligible to provide self-insured workers' compensation benefits for their employees.

History: En. Sec. 30, Ch. 96, L. 1915; re-en. Sec. 2970, R.C.M. 1921; re-en. Sec. 2970, R.C.M. 1935; amd. Sec. 2, Ch. 443, L. 1973; R.C.M. 1947, 92-901; amd. Sec. 81, Ch. 397, L. 1979; amd. Sec. 64, Ch. 613, L. 1989; amd. Sec. 1, Ch. 163, L. 1991; amd. Sec. 7, Ch. 619, L. 1993.

39-71-2102. Proof of solvency to be filed. Every employer who has elected to be bound by compensation plan No. 1 shall file proof of his solvency within the time and in the form as may be prescribed by the rules or orders of the department.

History: En. Sec. 30, Ch. 96, L. 1915; re-en. Sec. 2971, R.C.M. 1921; amd. Sec. 5, Ch. 139, L. 1931; re-en. Sec. 2971, R.C.M. 1935; amd. Sec. 3, Ch. 176, L. 1957; amd. Sec. 169, Ch. 147, L. 1963; amd. Sec. 1, Ch. 183, L. 1965; amd. Sec. 1, Ch. 170, L. 1969; amd. Sec. 1, Ch. 143, L. 1971; amd. Sec. 3, Ch. 443, L. 1973; amd. Sec. 2, Ch. 318, L. 1975; R.C.M. 1947, 92-902; amd. Sec. 64, Ch. 613, L. 1989.

39-71-2103. Employer permitted to carry on business and settle directly with employee — individual liability. (1) If the employer making the election is found by the department and the Montana self-insurers guaranty fund to have the requisite financial ability to pay the compensation and benefits in this chapter, then the department, with the concurrence of the guaranty fund, shall grant to the employer permission to carry on business for the year within which the election is made and proof filed, or the remaining portion of the year, and to make payments directly to the employees as they may become entitled to receive the payments.

(2) Each individual employer in an association, corporation, limited liability company, or organization of employers given permission by the department to operate as self-insured under plan No. 1 of this chapter is jointly and severally liable for all obligations incurred by the association, corporation, limited liability company, or organization under this chapter. An association, corporation, limited liability company, or organization of employers given permission to operate as self-insured shall maintain excess liability coverage in amounts and under conditions as provided by rules of the department.

History: En. Sec. 30, Ch. 96, L. 1915; re-en. Sec. 2972, R.C.M. 1921; re-en. Sec. 2972, R.C.M. 1935; amd. Sec. 51, Ch. 23, L. 1975; R.C.M. 1947, 92-903(part); amd. Sec. 2, Ch. 480, L. 1985; amd. Sec. 64, Ch. 613, L. 1989; amd. Sec. 2, Ch. 163, L. 1991; amd. Sec. 19, Ch. 516, L. 1995.

39-71-2104. Renewal of application. An employer, so long as that employer continues to employ and continues to be bound by compensation plan No. 1, shall annually renew the application to be permitted to continue to make payments directly to employees for the next year. The department may, with the concurrence of the Montana self-insurers guaranty fund, renew the application from year to year. The annual renewal application must be in the form, for the period, and subject to the time limits prescribed by the department.

History: En. Sec. 30, Ch. 96, L. 1915; re-en. Sec. 2972, R.C.M. 1921; re-en. Sec. 2972, R.C.M. 1935; amd. Sec. 51, Ch. 23, L. 1975; R.C.M. 1947, 92-903(part); amd. Sec. 64, Ch. 613, L. 1989; amd. Sec. 3, Ch. 163, L. 1991; amd. Sec. 10, Ch. 555, L. 1993.

39-71-2105. Additional proof of solvency — revocation of order. The department, with the concurrence of the Montana self-insurers guaranty fund, may at any time require from any employer acting under compensation plan No. 1 additional proof of solvency and financial ability to pay the compensation provided by this chapter and may at any time, upon notice to the employer of not less than 10 or more than 20 days, after and upon a full hearing, revoke any order or approval.

History: En. Sec. 30, Ch. 96, L. 1915; re-en. Sec. 2973, R.C.M. 1921; re-en. Sec. 2973, R.C.M. 1935; amd. Sec. 52, Ch. 23, L. 1975; R.C.M. 1947, 92-904; amd. Sec. 64, Ch. 613, L. 1989; amd. Sec. 1, Ch. 150, L. 1993.

39-71-2106. Requiring security of employer. (1) (a) The department, with the concurrence of the Montana self-insurers guaranty fund, may require any employer who elects to be bound by compensation plan No. 1 to provide a security deposit in accordance with rules adopted by the department. All securities of the United States treasury must be in book-entry form. The security deposit may be a surety bond, government bond, certificate of deposit, or letter of credit approved by the department and the Montana self-insurers guaranty fund. For the first 3 years of operating as a self-insured employer, the employer's security deposit must be the greater of:

(i) $250,000; or

(ii) an average of the workers' compensation liabilities incurred by the employer in Montana for the first 3 of the last 4 completed calendar years.

(b) The department, with the concurrence of the Montana self-insurers guaranty fund, may, in accordance with rules adopted by the department, require a larger deposit as additional evidence of ability to pay the benefits provided by this chapter.

(c) The department may, with the concurrence of the Montana self-insurers guaranty fund, reduce the amount of the security deposit if the evidence indicates that the full amount of the deposit is unnecessary.

(2) (a) The department, with the concurrence of the Montana self-insurers guaranty fund, may require an employer to give security in addition to the security deposit described in subsection (1) if:

(i) the department, with the concurrence of the Montana self-insurers guaranty fund, determines that the employer lacks the ability to pay the benefits that are expected to be paid by the employer under the terms and conditions of this chapter that are chargeable to the employer during the year to be covered by the permission provided for in 39-71-2103; or

(ii) the employer is a group of individual employers seeking permission to operate under compensation plan No. 1.

(b) The additional security required in subsection (2)(a) must be an amount that the department, with the concurrence of the Montana self-insurers guaranty fund, finds reasonable and necessary to pay the benefits provided under the terms and conditions of this chapter that the employer may accrue during the year.

(3) (a) The security deposit provided for in subsection (1) must be deposited with the department. The security deposit may consist of:

(i) a bond executed to the department with a surety. The security deposit must state that the employer will pay or cause to be paid to employees the amount for which the employer was given permission under 39-71-2103 and for which the employer is liable under the terms and conditions of this chapter during the year.

(ii) any Montana state, county, municipal, or school district bonds that the department and the Montana self-insurers guaranty fund consider solvent; or

(iii) other security deposits allowed in subsection (1)(a).

(b) Each security deposit and the character and amount of the security deposit are subject to approval, revision, or change considered necessary by the department and the Montana self-insurers guaranty fund.

(c) Upon proof of the final payment of the liability for which the security deposit is given, the security deposit or any remainder of the security deposit must be returned to the depositor.

(4) The department is liable for the value and safekeeping of all security deposits and shall, at any time, upon demand of the depositor, account for the security deposits.

History: En. Sec. 30, Ch. 96, L. 1915; re-en. Sec. 2974, R.C.M. 1921; re-en. Sec. 2974, R.C.M. 1935; amd. Sec. 53, Ch. 23, L. 1975; R.C.M. 1947, 92-905; amd. Sec. 3, Ch. 480, L. 1985; amd. Sec. 51, Ch. 464, L. 1987; amd. Sec. 64, Ch. 613, L. 1989; amd. Sec. 1, Ch. 120,

L. 1991; amd. Sec. 9, Ch. 558, L. 1991; amd. Sec. 2, Ch. 150, L. 1993; amd. Sec. 11, Ch. 555, L. 1993; amd. Sec. 1, Ch. 83, L. 1995.

39-71-2107. When employer to make deposit or security to guarantee payment of compensation. Within 30 days after the happening of an accident where death or the nature of the injury renders the amount of future payments certain or reasonably certain, the employer shall make a deposit or give security, as herein defined, with the department for the protection and guaranty of the payment of such liability in such sum as the department may direct. However, if sufficient securities are already on deposit with the department or if the department determines that the employer has sufficient financial responsibility to meet the liability of the employer, together with other liabilities already accrued, no such additional deposit or security shall be demanded.

History: En. Sec. 30, Ch. 96, L. 1915; re-en. Sec. 2976, R.C.M. 1921; re-en. Sec. 2976, R.C.M. 1935; amd. Sec. 55, Ch. 23, L. 1975; R.C.M. 1947, 92-907; amd. Sec. 64, Ch. 613, L. 1989.

39-71-2108. Failure of employer to pay compensation — duty of department. Upon the failure of the employer to pay any compensation provided for in this chapter upon the terms and in the amounts and at the times when the same becomes due and payable, the department shall, upon demand of the person to whom compensation is due, apply any deposits made with the department to the payment of the same, and the department shall take the proper steps to convert any securities on deposit with the department or sufficient thereof into cash and to pay the same upon the liabilities of the employer accruing under the terms of this chapter, and the department shall, when necessary, collect and enforce the collection of the liability of all sureties upon any bonds which may be given by the employer to insure the payment of his liability. To these ends and for these purposes, the department shall be deemed to be the owner of the deposit and security and the obligee in the bond in trust for the purposes and may proceed in its own name to recover upon the bonds or foreclose and liquidate the securities.

History: En. Sec. 30, Ch. 96, L. 1915; re-en. Sec. 2975, R.C.M. 1921; re-en. Sec. 2975, R.C.M. 1935; amd. Sec. 54, Ch. 23, L. 1975; R.C.M. 1947, 92-906; amd. Sec. 64, Ch. 613, L. 1989.

39-71-2109. Repealed. Sec. 21, Ch. 555, L. 1993.

History: En. Sec. 30, Ch. 96, L. 1915; re-en. Sec. 2977, R.C.M. 1921; re-en. Sec. 2977, R.C.M. 1935; amd. Sec. 56, Ch. 23, L. 1975; R.C.M. 1947, 92-908; amd. Sec. 2, Ch. 471, L. 1985; amd. Sec. 64, Ch. 613, L. 1989; amd. Sec. 4, Ch. 163, L. 1991.

Part 22

Compensation Plan Number Two

Part Cross-References

Definitions, 39-71-116.
Employer defined, 39-71-117.
Employee defined, 39-71-118.
Injury defined, 39-71-119.

39-71-2201. Election to be bound by plan. (1) Any employer except those specified in 39-71-403 may, by filing his election to become bound by compensation plan No. 2, insure his liability to pay the compensation and benefits provided by this chapter with any insurance company authorized to transact such business in this state.

(2) Any employer electing to become bound by compensation plan No. 2 shall make his election on the form and in the manner prescribed by the department.

History: (1)En. Sec. 35, Ch. 96, L. 1915; re-en. Sec. 2978, R.C.M. 1921; re-en. Sec. 2978, R.C.M. 1935; amd. Sec. 1, Ch. 49, L. 1961; Sec. 92-1001, R.C.M. 1947; (2)En. Sec. 35, Ch. 96, L. 1915; re-en. Sec. 2979, R.C.M. 1921; re-en. Sec. 2979, R.C.M. 1935; amd. Sec. 2, Ch. 49, L. 1961; amd. Sec. 57, Ch. 23, L. 1975; amd. Sec. 1, Ch. 324, L. 1977; Sec. 92-1002, R.C.M. 1947; R.C.M. 1947, 91-1001, 92-1002(1); amd. Sec. 82, Ch. 397, L. 1979; amd. Sec. 64, Ch. 613, L. 1989.

39-71-2202. Policies made subject to chapter. Every policy for insurance written under compensation plan No. 2 shall be considered to be made subject to the provisions of this chapter.

History: En. Sec. 35, Ch. 96, L. 1915; re-en. Sec. 2982, R.C.M. 1921; re-en. Sec. 2982, R.C.M. 1935; amd. Sec. 1, Ch. 217, L. 1951; amd. Sec. 5, Ch. 176, L. 1957; amd. Sec. 1, Ch. 203, L. 1959; amd. Sec. 170, Ch. 147, L. 1963; amd. Sec. 1, Ch. 142, L. 1971; amd. Sec. 59, Ch. 23, L. 1975; amd. Sec. 3, Ch. 318, L. 1975; R.C.M. 1947, 92-1005; amd. Sec. 13, Ch. 103, L. 1979.

39-71-2203. Content of policies — policies subject to approval, change, or revision by department. (1) All policies insuring the payment of compensation under this chapter must contain a clause to the effect that, as between the employee and the insurer, the notice to or knowledge of the occurrence of the injury on the part of the insured shall be deemed notice or knowledge, as the case may be, on the part of the insurer; that jurisdiction of the insured for the purpose of this chapter shall be jurisdiction of the insurer; and that the insurer shall in all things be bound by and subject to the awards, orders, judgments, or decrees rendered against such insured.

(2) No such policy shall be issued unless it contains the agreement of the insurer that it will promptly pay to the person entitled to compensation all the installments of compensation or other payments in this chapter provided for and that the obligation shall not be affected by any default of the insured after the injury or by any default in the giving of any notice required by such policy or by this chapter or otherwise. Such agreement shall be construed to be a direct promise by the insured to the person entitled to compensation.

(3) Every policy or contract insuring against liability for compensation under compensation plan No. 2 must contain a clause to the effect that the insurer shall be directly and primarily liable to and will pay directly to the employee or in case of death to his beneficiaries or major or minor dependents, the compensation, if any, for which the employer is liable.

(4) Every such policy shall at all times be subject to approval, change, or revision by the department and shall contain the clauses, agreements, and promises required by this chapter.

History: (1)En. Sec. 35, Ch. 96, L. 1915; re-en. Sec. 2980, R.C.M. 1921; amd. Sec. 6, Ch. 139, L. 1931; re-en. Sec. 2980, R.C.M. 1935; amd. Sec. 4, Ch. 176, L. 1957; Sec. 92-1003, R.C.M. 1947; (2)En. Sec. 35, Ch. 96, L. 1915; amd. Sec. 10, Ch. 100, L. 1919; re-en. Sec. 2981, R.C.M. 1921; amd. Sec. 11, Ch. 177, L. 1929; re-en. Sec. 2981, R.C.M. 1935; amd. Sec. 1, Ch. 141, L. 1971; amd. Sec. 58, Ch. 23, L. 1975; Sec. 92-1004, R.C.M. 1947; (3), (4)En. Sec. 35, Ch. 96, L. 1915; re-en. Sec. 2988, R.C.M. 1921; re-en. Sec. 2988, R.C.M. 1935; Sec. 92-1011, R.C.M. 1947; R.C.M. 1947, 92-1003, 92-1004(part), 92-1011; amd. Sec. 64, Ch. 613, L. 1989.

Cross-References

Policies to provide for freedom of choice in selection of practitioners — professional practice not enlarged, 33-22-111.

39-71-2204. Insurer to submit notice of coverage within thirty days — penalty for failure. (1) The insurer shall, within 30 days after the issuance of the policy of workers' compensation insurance, submit to the department the notice of coverage stating the effective date of the policy insuring the employer and other information that may be required by the department.

(2) The department may:

(a) recognize the advisory organization designated under 33-16-1023 as an agent for authorized workers' compensation insurers in Montana; and

(b) under terms and conditions acceptable to the department, accept notice of coverage received from the advisory organization designated under 33-16-1023 as the insurer's notice of coverage.

(3) The department may, in its discretion, assess a penalty of no more than $200 against an insurer that as a general business practice does not comply with the 30-day notice requirement set forth in subsection (1).

History: En. Sec. 35, Ch. 96, L. 1915; re-en. Sec. 2979, R.C.M. 1921; re-en. Sec. 2979, R.C.M. 1935; amd. Sec. 2, Ch. 49, L. 1961; amd. Sec. 57, Ch. 23, L. 1975; amd. Sec. 1, Ch. 324, L. 1977; R.C.M. 1947, 92-1002(part); amd. Sec. 64, Ch. 613, L. 1989; amd. Sec. 12, Ch. 555, L. 1993; amd. Sec. 25, Ch. 186, L. 1995.

39-71-2205. Policy in effect until canceled or replaced — twenty-day notification of cancellation required — penalty. (1) The policy remains in effect until canceled, and cancellation may take effect only by written notice to the named insured and to the department at least 20 days prior to the date of cancellation. However, the policy terminates on the effective date of a replacement or succeeding workers' compensation insurance policy issued to the insured. Nothing in this section prevents an insurer from canceling a policy of workers' compensation insurance before a replacement policy is issued to the insured.

(2) The department may:

(a) recognize the advisory organization designated under 33-16-1023 as an agent for authorized workers' compensation insurers in Montana; and

(b) under terms and conditions acceptable to the department, accept notice of cancellation received from the advisory organization designated under 33-16-1023 as the insurer's notice of cancellation.

(3) (a) The department may assess a penalty of up to $200 against an insurer that does not comply with the notice requirement in subsection (1).

(b) An insurer may contest the penalty assessment in a hearing conducted according to department rules.

History: En. Sec. 35, Ch. 96, L. 1915; re-en. Sec. 2979, R.C.M. 1921; re-en. Sec. 2979, R.C.M. 1935; amd. Sec. 2, Ch. 49, L. 1961; amd. Sec. 57, Ch. 23, L. 1975; amd. Sec. 1, Ch. 324, L. 1977; R.C.M. 1947, 92-1002(part); amd. Sec. 1, Ch. 333, L. 1989; amd. Sec. 64, Ch. 613, L. 1989; amd. Sec. 13, Ch. 555, L. 1993; amd. Sec. 26, Ch. 186, L. 1995.

39-71-2206. Repealed. Sec. 13, Ch. 310, L. 1997.

History: (1)En. Sec. 35, Ch. 96, L. 1915; amd. Sec. 10, Ch. 100, L. 1919; re-en. Sec. 2981, R.C.M. 1921; amd. Sec. 11, Ch. 177, L. 1929; re-en. Sec. 2981, R.C.M. 1935; amd. Sec. 1, Ch. 141, L. 1971; amd. Sec. 58, Ch. 23, L. 1975; Sec. 92-1004, R.C.M. 1947; (2)En. Sec.

35, Ch. 96, L. 1915; amd. Sec. 11, Ch. 100, L. 1919; re-en. Sec. 2984, R.C.M. 1921; re-en. Sec. 2984, R.C.M. 1935; amd. Sec. 61, Ch. 23, L. 1975; Sec. 92-1007, R.C.M. 1947; (3)En. Sec. 35, Ch. 96, L. 1915; re-en. Sec. 2989, R.C.M. 1921; re-en. Sec. 2989, R.C.M. 1935; Sec. 92-1012, R.C.M. 1947; R.C.M. 1947, 92-1004(part), 92-1007, 92-1012; amd. Sec. 83, Ch. 397, L. 1979; amd. Sec. 1, Ch. 242, L. 1987; amd. Sec. 64, Ch. 613, L. 1989; amd. Sec. 14, Ch. 555, L. 1993.

39-71-2207. Repealed. Sec. 21, Ch. 555, L. 1993.

History: En. Sec. 35, Ch. 96, L. 1915; re-en. Sec. 2985, R.C.M. 1921; re-en. Sec. 2985, R.C.M. 1935; amd. Sec. 62, Ch. 23, L. 1975; R.C.M. 1947, 92-1008; amd. Sec. 3, Ch. 471, L. 1985; amd. Sec. 64, Ch. 613, L. 1989.

39-71-2208 through 39-71-2210 reserved.

39-71-2211. Premium rates for construction industry — filing required. (1) With respect to each classification of risk in the construction industry under plan No. 2, the advisory organization designated under 33-16-1023 shall file with the commissioner of insurance a method of computing premiums that does not impose a higher insurance premium solely because of an employer's higher rate of wages paid.

(2) The commissioner shall accept a filing under subsection (1) that includes a reasonable method of recognizing differences in rates of pay. This method must use a credit scale with the starting point set at 1.168 times the Montana average weekly wage as reported by the department.

(3) The advisory organization shall file a revenue neutral plan for new and renewed policies for prompt and orderly transition to a method of computing premiums that is in compliance with the requirements of this section.

(4) The state compensation insurance fund, plan No. 3, shall adopt the plan filed by the designated advisory organization or adopt a credit scale plan that meets the requirements of this section.

History: En. Sec. 3, Ch. 480, L. 1991; amd. Sec. 1, Ch. 224, L. 1993; amd. Sec. 14, Ch. 630, L. 1993; amd. Sec. 27, Ch. 186, L. 1995; amd. Sec. 1, Ch. 131, L. 1999.

Compiler's Comments

1999 Amendment: Chapter 131 in (2) reduced starting point of credit scale for computing premium rates from one and one-half times Montana average weekly wage to 1.168 times that wage. Amendment effective July 1, 1999.

Effective Date — Applicability: Section 2, Ch. 131, L. 1999, provided: "[This act] is effective July 1, 1999, and applies to premium rates computed for the construction industry beginning July 1, 2000."

Part 23

Compensation Plan Number Three

Part Cross-References

Definitions, 39-71-116.

Employer defined, 39-71-117.

39-71-2301. Repealed. Sec. 59, Ch. 613, L. 1989.

History: En. Sec. 40, Ch. 96, L. 1915; re-en. Sec. 2993, R.C.M. 1921; re-en. Sec. 2993, R.C.M. 1935; amd. Sec. 4, Ch. 123, L. 1957; amd. Sec. 176, Ch. 147, L. 1963; amd. Sec. 22, Ch. 329, L. 1969; amd. Sec. 69, Ch. 23, L. 1975; amd. Sec. 1, Ch. 171, L. 1975; R.C.M. 1947, 92-1105(1); amd. Sec. 14, Ch. 103, L. 1979.

39-71-2302. Repealed. Sec. 59, Ch. 613, L. 1989.

History: En. Sec. 40, Ch. 96, L. 1915; re-en. Sec. 2990, R.C.M. 1921; re-en. Sec. 2990, R.C.M. 1935; amd. Sec. 1, Ch. 123, L. 1957; amd. Sec. 175, Ch. 147, L. 1963; amd. Sec. 1, Ch. 233, L. 1969; amd. Sec. 20, Ch. 329, L. 1969; amd. Sec. 65, Ch. 23, L. 1975; R.C.M. 1947, 92-1101; amd. Sec. 1, Ch. 232, L. 1987.

39-71-2303. Renumbered 39-71-2336 by Code Commissioner, 1989.

39-71-2304. Repealed. Sec. 59, Ch. 613, L. 1989.

History: (1)En. Sec. 40, Ch. 96, L. 1915; re-en. Sec. 2992, R.C.M. 1921; re-en. Sec. 2992, R.C.M. 1935; amd. Sec. 3, Ch. 123, L. 1957; amd. Sec. 21, Ch. 329, L. 1969; amd. Sec. 68, Ch. 23, L. 1975; Sec. 92-1104, R.C.M. 1947; (2) thru (5)En. Sec. 40, Ch. 96, L. 1915; re-en. Sec. 2993, R.C.M. 1921; re-en. Sec. 2993, R.C.M. 1935; amd. Sec. 4, Ch. 123, L. 1957; amd. Sec. 176, Ch. 147, L. 1963; amd. Sec. 22, Ch. 329, L. 1969; amd. Sec. 69, Ch. 23, L. 1975; amd. Sec. 1, Ch. 171, L. 1975; Sec. 92-1105, R.C.M. 1947; R.C.M. 1947, 92-1104, 92-1105(3), (4); amd. Sec. 4, Ch. 283, L. 1983; amd. Sec. 2, Ch. 232, L. 1987; amd. Sec. 1, Ch. 239, L. 1987; amd. Sec. 10, Ch. 333, L. 1989; amd. Sec. 2, Ch. 641, L. 1989.

39-71-2305. Repealed. Sec. 59, Ch. 613, L. 1989.

History: En. 92-1105.1 by Sec. 28, Ch. 341, L. 1969; amd. Sec. 70, Ch. 23, L. 1975; R.C.M. 1947, 92-1105.1; amd. Sec. 1, Ch. 109, L. 1987.

39-71-2306. Repealed. Sec. 59, Ch. 613, L. 1989.

History: En. Sec. 40, Ch. 96, L. 1915; re-en. Sec. 2996, R.C.M. 1921; re-en. Sec. 1996, R.C.M. 1935; amd. Sec. 4, Ch. 233, L. 1969; amd. Sec. 71, Ch. 23, L. 1975; R.C.M. 1947, 92-1108; amd. Sec. 15, Ch. 103, L. 1979.

39-71-2307. Renumbered 39-71-2339 by Code Commissioner, 1989.

39-71-2308. Renumbered 39-71-2340 by Code Commissioner, 1989.

39-71-2309. Repealed. Sec. 16, Ch. 103, L. 1979.

History: En. Sec. 40, Ch. 96, L. 1915; re-en. Sec. 3003, R.C.M. 1921; re-en. Sec. 3003, R.C.M. 1935; amd. Sec. 182, Ch. 147, L. 1963; amd. Sec. 76, Ch. 23, L. 1975; R.C.M. 1947, 92-1115.

39-71-2310. Repealed. Sec. 16, Ch. 103, L. 1979.

History: (1)En. Sec. 40, Ch. 96, L. 1915; re-en. Sec. 3004, R.C.M. 1921; re-en. Sec. 3004, R.C.M. 1935; amd. Sec. 183, Ch. 147, L. 1963; Sec. 92-1116, R.C.M. 1947; (2)En. Sec. 40, Ch. 96, L. 1915; re-en. Sec. 3005, R.C.M. 1921; re-en. Sec. 3005, R.C.M. 1935; amd. Sec. 77, Ch. 23, L. 1975; Sec. 92-1117, R.C.M. 1947; R.C.M. 1947, 92-1116, 92-1117.

39-71-2311. Intent and purpose of plan. It is the intent and purpose of the state fund to allow employers an option to insure their liability for workers' compensation and occupational disease coverage with the state fund. The state fund must be neither more nor less than self-supporting. Premium rates must be set at least annually at a level sufficient to ensure the adequate funding of the insurance program, including the costs of administration, benefits, and adequate reserves, during and at the end of the period for which the rates will be in effect. In determining premium rates, the state fund shall make every effort to adequately predict future costs. When the costs of a factor influencing rates are unclear and difficult to predict, the state fund shall use a prediction calculated to be more than likely to cover those costs rather than less than likely to cover those costs. Unnecessary surpluses that are created by the imposition of premiums found to have been set higher than necessary because of a high estimate of the cost of a factor or factors may be refunded by the declaration of a dividend as provided in this part. For the purpose of keeping the state fund solvent, the state fund shall implement variable pricing levels as provided in 39-71-2341 and the board of directors may, in its discretion, assess a policy charge, a minimum premium, or both.

History: En. Sec. 1, Ch. 613, L. 1989; amd. Sec. 7, Ch. 4, Sp. L. May 1990; amd. Sec. 6, Ch. 323, L. 1991; amd. Sec. 12, Ch. 295, L. 1993; amd. Sec. 1, Ch. 305, L. 1995.

Cross-References

Variable pricing — higher premium by State Fund for noncompliance with safety program — expenditure accounting, 39-71-2341.

39-71-2312. Definitions. Unless the context requires otherwise, in this part the following definitions apply:

(1) "Board" means the board of directors of the state compensation insurance fund provided for in 2-15-1019.

(2) "Department" means the department of administration provided for in 2-15-1001.

(3) "Executive director" means the chief executive officer of the state compensation insurance fund.

(4) "State fund" means the state compensation insurance fund provided for in 39-71-2313. It is also known as compensation plan No. 3 or plan No. 3.

History: En. Sec. 2, Ch. 613, L. 1989; amd. Sec. 14, Ch. 630, L. 1993.

39-71-2313. State compensation insurance fund created — obligation to insure. (1) There is a state compensation insurance fund known as the state fund that is a nonprofit, independent public corporation established for the purpose of allowing an option for employers to insure their liability for workers' compensation and occupational disease coverage under this chapter.

(2) The state fund is required to insure any employer in this state who requests coverage, and it may not refuse to provide coverage unless an employer or the employer's principals have defaulted on a state fund obligation and the default remains unsatisfied.

History: En. Sec. 4, Ch. 613, L. 1989; amd. Sec. 8, Ch. 4, Sp. L. May 1990; amd. Sec. 14, Ch. 630, L. 1993; amd. Sec. 2, Ch. 305, L. 1995.

39-71-2314. State fund subject to laws applying to state agencies. The state fund is subject to laws that generally apply to state agencies, including but not limited to Title 2, chapters 2, 3, 4 (only as provided in 39-71-2316), and 6, and Title 5, chapter 13. The state fund is not exempt from a law that applies to state agencies unless that law specifically exempts the state fund by name and clearly states that it is exempt from that law.

History: En. Sec. 10, Ch. 613, L. 1989; amd. Sec. 9, Ch. 4, Sp. L. May 1990; amd. Sec. 3, Ch. 630, L. 1993; amd. Sec. 11, Ch. 310, L. 1997.

39-71-2315. Management of state fund — powers and duties of the board — business plan required. (1) The management and control of the state fund is vested solely in the board.

(2) The board is vested with full power, authority, and jurisdiction over the state fund. The board may perform all acts necessary or convenient in the exercise of any power, authority, or jurisdiction over the state fund, either in the administration of the state fund or in connection with the insurance business to be carried on under the provisions of this part, as fully and completely as the governing body of a private mutual insurance carrier, in order to fulfill the objectives and intent of this part. Bonds may not be issued by the board, the state fund, or the executive director.

(3) The board shall adopt a business plan no later than June 30 for the next fiscal year. At a minimum, the plan must include:

(a) specific goals for the fiscal year for financial performance. The standard for measurement of financial performances must include an evaluation of premium to surplus.

(b) specific goals for the fiscal year for operating performance. Goals must include but not be limited to specific performance standards for staff in the area of senior management, underwriting, and claims administration. Goals must, in general, maximize efficiency, economy, and equity as allowed by law.

(4) The business plan must be available upon request to the general public for a fee not to exceed the actual cost of publication. However, performance goals relating to a specific employment position are confidential and not available to the public.

(5) No sooner than July 1 or later than October 31, the board shall convene a public meeting to review the performance of the state fund, using the business plan for comparison of all the established goals and targets. The board shall publish, by November 30 of each year, a report of the state fund's actual performance as compared to the business plan.

(6) The state fund board of directors shall establish in-house guidelines for procurement of insurance-related services and shall include guidelines for the solicitation of submissions of information regarding insurance-related services from more than one vendor. The board may include guidelines for the circumstances when business necessity or expedience may preclude the solicitation of submissions from more than one vendor. The board may also include in the guidelines the exemptions to the procurement process in 18-4-132.

History: En. Sec. 5, Ch. 613, L. 1989; amd. Sec. 10, Ch. 4, Sp. L. May 1990; amd. Sec. 19, Ch. 619, L. 1993; amd. Sec. 2, Ch. 407, L. 1999.

Compiler's Comments

1999 Amendment: Chapter 407 inserted (6) concerning in-house guidelines for certain procurements. Amendment effective April 21, 1999.

39-71-2316. Powers of state fund. For the purposes of carrying out its functions, the state fund may:

(1) insure any employer for workers' compensation and occupational disease liability as the coverage is required by the laws of this state and, as part of the coverage, provide related employers' liability insurance upon approval of the board;

(2) sue and be sued;

(3) except as provided in section 21, Chapter 4, Special Laws of May 1990, enter into contracts relating to the administration of the state fund, including claims management, servicing, and payment;

(4) collect and disburse money received;

(5) adopt classifications and charge premiums for the classifications so that the state fund will be neither more nor less than self-supporting. Premium rates for classifications may only be adopted and changed using a process, a procedure, formulas, and factors set forth in rules adopted under Title 2, chapter 4, parts 2 through 4. After the rules have been adopted, the state fund need not follow the rulemaking provisions of Title 2, chapter 4, when changing classifications and premium rates. The contested case rights and provisions of Title 2, chapter 4, do not apply to an employer's classification or premium rate. The state fund is required to belong to a licensed workers' compensation

advisory organization or a licensed workers' compensation rating organization under Title 33, chapter 16, part 4, and may use the classifications of employment adopted by the designated workers' compensation advisory organization, as provided in Title 33, chapter 16, part 10, and corresponding rates as a basis for setting its own rates. Except as provided in Title 33, chapter 16, part 10, a workers' compensation advisory organization or a licensed workers' compensation rating organization under Title 33, chapter 16, part 4, or other person may not, without first obtaining the written permission of the employer, use, sell, or distribute an employer's specific payroll or loss information, including but not limited to experience modification factors.

(6) pay the amounts determined due under a policy of insurance issued by the state fund;

(7) hire personnel;

(8) declare dividends if there is an excess of assets over liabilities. However, dividends may not be paid until adequate actuarially determined reserves are set aside.

(9) upon approval of the board, contract with licensed resident insurance producers;

(10) upon approval of the board, enter into agreements with licensed workers' compensation insurers, insurance associations, or insurance producers to provide workers' compensation coverage in other states to Montana-domiciled employers insured with the state fund;

(11) perform all functions and exercise all powers of a private insurance carrier that are necessary, appropriate, or convenient for the administration of the state fund.

History: **En. Sec. 8, Ch. 613, L. 1989; amd. Sec. 11, Ch. 4, Sp. L. May 1990; amd. Sec. 4, Ch. 630, L. 1993; amd. Sec. 28, Ch. 186, L. 1995; amd. Sec. 3, Ch. 305, L. 1995; amd. Secs. 15, 16, Ch. 276, L. 1997.**

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

Workers' compensation coverage, liability, and subrogation, Title 39, ch. 71, part 4.

39-71-2317. Appointment of executive director — management staff. The board shall appoint an executive director of the state fund who has general responsibility for the operations of the state fund. The executive director must have executive level experience, with knowledge of the insurance industry. The executive director must receive compensation as set by the board and serve at the pleasure of the board. The executive director may hire the management staff of the state fund, each of whom serves at the pleasure of the executive director.

History: **En. Sec. 7, Ch. 613, L. 1989.**

39-71-2318. Personal liability excluded. The members of the board, the executive director, and employees of the state fund are not liable personally, either jointly or severally, for any debt or obligation created or incurred by the state fund.

History: **En. Sec. 6, Ch. 613, L. 1989.**

Cross-References

State subject to suit, Art. II, sec. 18, Mont. Const.

Liability exposure of state government, Title 2, ch. 9, part 1.

39-71-2319. Assets and liabilities of prior state fund. All assets and funds held by the state compensation insurance fund established in former sections 39-71-2301, 39-71-2302, 39-71-2304 through 39-71-2306, and 39-71-2324 and sections 39-71-2321 through 39-71-2323, 39-71-2325 through 39-71-2327, 39-71-2336, 39-71-2339, and 39-71-2340 must be transferred to the state fund, and the state fund shall assume liability for all outstanding claims and indebtedness of the previously existing state fund.

History: En. Sec. 11, Ch. 613, L. 1989.

39-71-2320. Property of state fund — investment required — exception. (1) Except as provided in subsection (2), all premiums and other money paid to the state fund, all property and securities acquired through the use of money belonging to the state fund, and all interest and dividends earned upon money belonging to the state fund are the sole property of the state fund and must be used exclusively for the operations and obligations of the state fund. The money collected by the state fund may not be used for any other purpose. However, state fund money must be invested by the board of investments provided for in 2-15-1808.

(2) The state fund shall pay to the general fund:

(a) $10 million in the fiscal year ending June 30, 1998; and

(b) $10 million in the fiscal year ending June 30, 1999.

History: En. Sec. 9, Ch. 613, L. 1989; amd. Sec. 3, Ch. 424, L. 1995; amd. Sec. 17, Ch. 276, L. 1997.

39-71-2321. What to be deposited in state fund. (1) All premiums, penalties, recoveries by subrogation, interest earned upon money belonging to the state fund, securities acquired by or through use of money, and all interest and penalties on taxes in accordance with 15-1-501 must be deposited in the state fund. Except for a transfer authorized under 39-71-2352, the money must be separated into two accounts based upon whether they relate to claims for injuries resulting from accidents that occurred before July 1, 1990, or claims for injuries resulting from accidents that occur on or after that date.

(2) All funds deposited in the state fund may be spent as provided in 17-8-101(2)(b).

History: En. Sec. 40, Ch. 96, L. 1915; re-en. Sec. 2993, R.C.M. 1921; re-en. Sec. 2993, R.C.M. 1935; amd. Sec. 4, Ch. 123, L. 1957; amd. Sec. 176, Ch. 147, L. 1963; amd. Sec. 22, Ch. 329, L. 1969; amd. Sec. 69, Ch. 23, L. 1975; amd. Sec. 1, Ch. 171, L. 1975; R.C.M. 1947, 92-1105(2); amd. Sec. 5, Ch. 283, L. 1983; amd. Sec. 32, Ch. 613, L. 1989; amd. Sec. 12, Ch. 4, Sp. L. May 1990; amd. Sec. 4, Ch. 797, L. 1991; amd. Sec. 10, Ch. 630, L. 1993; amd. Secs. 18, 19, Ch. 276, L. 1997; amd. Sec. 6, Ch. 184, L. 1999; amd. Sec. 21, Ch. 389, L. 1999.

Compiler's Comments

1999 Amendments — Composite Section: Chapter 184 in (1) in first sentence after "money" deleted "taxes collected under 39-71-2503 and 39-71-2505" and at beginning of second sentence inserted exception clause; and made minor changes in style. Amendment effective March 26, 1999.

Chapter 389 at end of (2) substituted "may be spent as provided in 17-8-101(2)(b)" for "are statutorily appropriated as provided in 17-7-502"; and made minor changes in style. Amendment effective July 1, 1999.

39-71-2322. Money in state fund held in trust — disposition of funds upon repeal of chapter — exception. Except as provided in 39-71-2320, the money coming into the state fund must be held in trust for the purpose for which the money was collected. If this chapter is repealed, the money is subject to the disposition provided by the legislature repealing this chapter. In the absence of a legislative provision, distribution must be in accordance with the justice of the matter, due regard being given to obligations of compensation incurred and existing.

History: En. Sec. 24, Ch. 96, L. 1915; re-en. Sec. 2966, R.C.M. 1921; re-en. Sec. 2966, R.C.M. 1935; amd. Sec. 168, Ch. 147, L. 1963; R.C.M. 1947, 92-840; amd. Sec. 6, Ch. 283, L. 1983; amd. Sec. 33, Ch. 613, L. 1989; amd. Sec. 20, Ch. 276, L. 1997.

39-71-2323. Surplus in state fund — payment of dividends. Subject to the provisions of 39-71-2316, if at the end of any fiscal year there exists in the state fund account created by 39-71-2321 for claims for injuries resulting from accidents that occur on or after July 1, 1990, an excess of assets over liabilities, including necessary reserves and an appropriate surplus as determined by the board in accordance with 39-71-2330, and if the excess may be refunded safely, then the board, after consultation with the independent actuary engaged pursuant to 39-71-2330, may declare a dividend. The rules of the state fund must prescribe the manner of payment to those employers who have paid premiums into the state fund in excess of liabilities.

History: En. Sec. 40, Ch. 96, L. 1915; re-en. Sec. 2998, R.C.M. 1921; re-en. Sec. 2998, R.C.M. 1935; amd. Sec. 6, Ch. 123, L. 1957; amd. Sec. 180, Ch. 147, L. 1963; amd. Sec. 72, Ch. 23, L. 1975; R.C.M. 1947, 92-1110; amd. Sec. 7, Ch. 283, L. 1983; amd. Sec. 34, Ch. 613, L. 1989; amd. Sec. 13, Ch. 4, Sp. L. May 1990; amd. Sec. 5, Ch. 630, L. 1993; amd. Sec. 3, Ch. 407, L. 1999.

Compiler's Comments

1999 Amendment: Chapter 407 at end of first sentence substituted "an appropriate surplus as determined by the board in accordance with 39-71-2330, and if the excess may be refunded safely, then the board, after consultation with the independent actuary engaged pursuant to 39-71-2330, may declare a dividend" for "a reasonable surplus and if the excess may be refunded safely, then the state fund may declare a dividend"; at end of second sentence deleted "chargeable to them in the fund for that year"; and deleted former third sentence that read: "In determining the amount or proportion of the balance to which the employer is entitled as dividends, the state fund shall give consideration to the prior paid premiums and accident experience of each individual employer during the dividend year." Amendment effective July 1, 1999.

39-71-2324. Repealed. Sec. 59, Ch. 613, L. 1989.

History: En. Sec. 40, Ch. 96, L. 1915; amd. Sec. 7, Ch. 196, L. 1921; re-en. Sec. 3000, R.C.M. 1921; re-en. Sec. 3000, R.C.M. 1935; amd. Sec. 17, Ch. 176, L. 1953; amd. Sec. 186, Ch. 147, L. 1963; amd. Sec. 73, Ch. 23, L. 1975; R.C.M. 1947, 92-1112; amd. Sec. 8, Ch. 283, L. 1983.

39-71-2325. State fund to keep accounts of segregations. The state fund shall keep an accurate account of all the segregations of the state fund and shall divert from the fund any sums necessary to meet monthly payments, pending the conversion into cash of any security, and in such case shall repay the same out of the cash realized from the security.

History: En. Sec. 40, Ch. 96, L. 1915; re-en. Sec. 3001, R.C.M. 1921; re-en. Sec. 3001, R.C.M. 1935; amd. Sec. 187, Ch. 147, L. 1963; amd. Sec. 74, Ch. 23, L. 1975; R.C.M. 1947, 92-1113; amd. Sec. 9, Ch. 283, L. 1983; amd. Sec. 35, Ch. 613, L. 1989.

39-71-2326. Repealed. Sec. 6, Ch. 664, L. 1987.

History: En. Sec. 40, Ch. 96, L. 1915; re-en. Sec. 3010, R.C.M. 1921; re-en. Sec. 3010, R.C.M. 1935; amd. Sec. 184, Ch. 147, L. 1963; amd. Sec. 81, Ch. 23, L. 1975; R.C.M. 1947, 92-1122; amd. Sec. 10, Ch. 283, L. 1983.

39-71-2327. Earnings of state fund to be credited to fund — improper use a felony — exception. Except as provided in 39-71-2320, all earnings made by the state fund by reason of interest paid for the deposit of funds or otherwise must be credited to and become a part of the fund, and the making of profit, either directly or indirectly, by any person out of the use of the fund is a felony. A person convicted of an offense under this section is punishable by imprisonment in the state prison for a term not to exceed 2 years or a fine of not more than $5,000, or both.

History: **En. Sec. 40, Ch. 96, L. 1915; re-en. Sec. 3011, R.C.M. 1921; re-en. Sec. 3011, R.C.M 1935; amd. Sec. 185, Ch. 147, L. 1963; amd. Sec. 82, Ch. 23, L. 1975; R.C.M. 1947, 92-1123; amd. Sec. 11, Ch. 283, L. 1983; amd. Sec. 36, Ch. 613, L. 1989; amd. Sec. 21, Ch. 276, L. 1997.**

39-71-2328 and 39-71-2329 reserved.

39-71-2330. Rate setting — surplus. (1) The board has the authority to establish the rates to be charged by the state fund for insurance. The board shall engage the services of an independent actuary who is a member in good standing with the American academy of actuaries to develop and recommend actuarially sound rates. Rates must be set at amounts sufficient, when invested, to carry the estimated cost of all claims to maturity, to meet the reasonable expenses of conducting the business of the state fund, and to amass and maintain an excess of surplus over the amount produced by the national association of insurance commissioners' risk-based capital requirements for a casualty insurer.

(2) Because surplus is desirable in the insurance business, the board shall annually determine the level of surplus that must be maintained by the state fund pursuant to this section, but shall maintain a minimum surplus of 25% of annual earned premium. The state fund shall use the amount of the surplus above the risk-based capital requirements to secure the state fund against various risks inherent in or affecting the business of insurance and not accounted for or only partially measured by the risk-based capital requirements.

History: **En. Sec. 7, Ch. 630, L. 1993; amd. Sec. 4, Ch. 407, L. 1999.**

Compiler's Comments

1999 Amendment: Chapter 407 in (1) at end of third sentence substituted "an excess of surplus over the amount produced by the national association of insurance commissioners' risk-based capital requirements for a casualty insurer" for "by July 1, 2003, a surplus of 25% of the annual premium"; and inserted (2) concerning determination of appropriate level of surplus. Amendment effective July 1, 1999.

Cross-References

Powers of State Fund, 39-71-2316.

39-71-2331 through 39-71-2335 reserved.

39-71-2336. Manner of electing — contract or policy of insurance — payment of premium. The state fund shall prescribe the procedure by which an employer may elect to be bound by compensation plan No. 3, the effective time of the election, and the manner in which the election is terminated for reasons other than default in payment of premiums. Every employer electing to be bound by compensation plan No. 3 must receive from the state fund a contract or policy of insurance in a form approved by the department. The premium must be paid by the employer to the state fund at such times as the state fund prescribes and must be paid over by the state fund to the state treasurer to the credit of the state fund.

History: **En. Sec. 40, Ch. 96, L. 1915; amd. Sec. 6, Ch. 196, L. 1921; re-en. Sec. 2991, R.C.M. 1921; re-en. Sec. 2991, R.C.M. 1935; amd. Sec. 2, Ch. 123, L. 1957; amd. Sec. 178, Ch. 147, L. 1963; amd. Sec. 2, Ch. 233, L. 1969; amd. Sec. 67, Ch. 23, L. 1975; R.C.M. 1947,**

92-1103; amd. Sec. 3, Ch. 283, L. 1983; amd. Sec. 29, Ch. 613, L. 1989; Sec. 39-71-2303, MCA 1987; redes. 39-71-2336 by Code Commissioner, 1989.

39-71-2337. State fund to submit notice of coverage within thirty days — penalty for failure. (1) The state fund shall, within 30 days after the issuance of an insurance policy, submit to the department the notice of coverage stating the effective date of the policy insuring the employer and other information the department requires.

(2) The department may assess a penalty of no more than $200 against the state fund if, as a general business practice, the state fund does not comply with the 30-day notice requirement.

History: En. Sec. 44, Ch. 613, L. 1989.

39-71-2338. Repealed. Sec. 8, Ch. 323, L. 1991.

History: En. Sec. 45, Ch. 613, L. 1989.

39-71-2339. Cancellation of coverage — twenty days' notice required. The state fund may cancel an employer's coverage under this part for failure to report payroll or pay the premiums due or for another cause provided in the insurance policy. Cancellation may take effect only by written notice to the named insured at least 20 days prior to the date of cancellation or, in cases of nonreporting of payroll or nonpayment of a premium, by failure of the employer to submit payroll reports or pay a premium within 20 days after the due date. The state fund shall notify the department of the names and effective dates of all policies canceled. However, the policy terminates on the effective date of a replacement or succeeding insurance policy issued to the insured. This section does not prevent the state fund from canceling an insurance policy before a replacement policy is issued to the insured. After the cancellation date, the employer has the same status as an employer who is not enrolled under the Workers' Compensation Act unless a replacement or succeeding insurance policy has been issued.

History: En. Sec. 40, Ch. 96, L. 1915; re-en. Sec. 3002, R.C.M. 1921; amd. Sec. 1, Ch. 201, L. 1935; re-en. Sec. 3002, R.C.M. 1935; amd. Sec. 10, Ch. 235, L. 1947; amd. Sec. 7, Ch. 123, L. 1957; amd. Sec. 181, Ch. 147, L. 1963; amd. Sec. 75, Ch. 23, L. 1975; amd. Sec. 1, Ch. 225, L. 1975; R.C.M. 1947, 92-1114(part); amd. Sec. 30, Ch. 613, L. 1989; Sec. 39-71-2307, MCA 1987; redes. 39-71-2339 by Code Commissioner, 1989; amd. Sec. 7, Ch. 323, L. 1991; amd. Sec. 4, Ch. 305, L. 1995.

39-71-2340. Collection in case of default. (1) If an employer under plan No. 3 defaults in any payment to the state fund, the state fund may collect the sum due in a civil action in the name of the state. The right of action is cumulative.

(2) If an employer's right to operate has been canceled by the state fund for failure to pay premiums and the state fund finds that the property and assets of the employer are not sufficient to pay the premiums, the state fund may compromise the claim for premiums and accept a payment of an amount less than the total amount due.

History: En. Sec. 40, Ch. 96, L. 1915; re-en. Sec. 3002, R.C.M. 1921; amd. Sec. 1, Ch. 201, L. 1935; re-en. Sec. 3002, R.C.M. 1935; amd. Sec. 10, Ch. 235, L. 1947; amd. Sec. 7, Ch. 123, L. 1957; amd. Sec. 181, Ch. 147, L. 1963; amd. Sec. 75, Ch. 23, L. 1975; amd. Sec. 1, Ch. 225, L. 1975; R.C.M. 1947, 92-1114(part); amd. Sec. 31, Ch. 613, L. 1989; Sec. 39-71-2308, MCA 1987; redes. 39-71-2340 by Code Commissioner, 1989.

39-71-2341. Variable pricing — expenditure accounting. (1) The state fund shall implement variable pricing levels within individual rate classifications to reward an employer with a good safety record and penalize an employer with a poor safety record. The timeliness of an employer's payroll reporting and premium payments and other relevant factors may be considered in the placement of an employer within the variable pricing levels.

(2) The state fund shall separately account for money expended under 2-15-1708, 33-15-318, Title 39, chapter 71, part 15, 39-71-2311, and this section.

History: En. Sec. 10, Ch. 295, L. 1993; amd. Sec. 5, Ch. 407, L. 1999.

Compiler's Comments

1999 Amendment: Chapter 407 deleted former (1)(b) that read: "(b) provide an additional pricing level with a higher rate within the classification for those employers who do not satisfactorily implement a safety program subsequent to the provision of or attempt to provide onsite safety consultation services"; deleted former (2) that read: "(2) The state fund may assess a surcharge of an additional 20% on premiums payable to the state fund by high-loss employers. The criteria for identifying high-loss employers must be established by the state fund board of directors by rule"; and made minor changes in style. Amendment effective July 1, 1999.

Cross-References

Intent and purpose of plan, 39-71-2311.

39-71-2342 through 39-71-2350 reserved.

39-71-2351. Purpose of separation of state fund liability as of July 1, 1990, and of separate funding of claims before and on or after that date. (1) An unfunded liability exists in the state fund. It has existed since at least the mid-1980s and has grown each year. There have been numerous attempts to solve the problem by legislation and other methods. These attempts have alleviated the problem somewhat, but the problem has not been solved.

(2) The legislature has determined that it is necessary to the public welfare to make workers' compensation insurance available to all employers through the state fund as the insurer of last resort. In making this insurance available, the state fund has incurred the unfunded liability. The legislature has determined that the most cost-effective and efficient way to provide a source of funding for and to ensure payment of the unfunded liability and the best way to administer the unfunded liability is to separate the liability of the state fund on the basis of whether a claim is for an injury resulting from an accident that occurred before July 1, 1990, or an accident that occurs on or after that date.

(3) The legislature further determines that in order to prevent the creation of a new unfunded liability with respect to claims for injuries for accidents that occur on or after July 1, 1990, certain duties of the state fund should be clarified and legislative oversight of the state fund should be increased.

History: En. Sec. 1, Ch. 4, Sp. L. May 1990; amd. Sec. 5, Ch. 797, L. 1991; amd. Sec. 1, Ch. 637, L. 1993; amd. Sec. 22, Ch. 276, L. 1997.

39-71-2352. Separate payment structure and sources for claims for injuries resulting from accidents that occurred before July 1, 1990, and on or after July 1, 1990 — spending limit — authorizing transfer of money between accounts for payment of claims. (1) Premiums paid to the state fund based upon wages payable before July 1, 1990, may be used only to administer and pay claims for injuries resulting from accidents that occurred before July 1, 1990. Premiums paid to the state fund based upon wages payable on or after July 1, 1990, may be used only to administer and pay claims for injuries resulting from accidents that occur on or after July 1, 1990.

(2) The state fund shall:

(a) determine the cost of administering and paying claims for injuries resulting from accidents that occurred before July 1, 1990, and separately determine the cost of administering and paying claims for injuries resulting from accidents that occur on or after July 1, 1990;

(b) keep adequate and separate accounts of the costs determined under subsection (2)(a); and

(c) fund administrative expenses and benefit payments for claims for injuries resulting from accidents that occurred before July 1, 1990, and claims for injuries resulting from accidents that occur on or after July 1, 1990, separately from the sources provided by law.

(3) The state fund may not spend more than $1.25 million a year to administer claims for injuries resulting from accidents that occurred before July 1, 1990.

(4) As used in this section, "adequately funded" means the present value of:

(a) the total cost of future benefits remaining to be paid;

(b) the cost of administering the claims; and

(c) an additional amount equal to 10% of the total of the amounts in subsections (4)(a) and (4)(b).

(5) By October 1 of each year following the first full fiscal year after termination of the old fund liability tax, any funds in excess of the adequate funding amount established in subsection (4) must be returned to the account established in 39-71-2321 to pay claims for injuries resulting from accidents that occurred on or after July 1, 1990. The total amount of funds returned to the account under this section may not exceed $63.8 million.

(6) If in any fiscal year after the old fund liability tax is terminated claims for injuries resulting from accidents that occurred before July 1, 1990, are not adequately funded, any amount returned to the account in 39-71-2321 to pay claims for injuries resulting from accidents that occurred on or after July 1, 1990, must be transferred back to the account established in 39-71-2321 to pay claims for injuries resulting from accidents that occurred before July 1, 1990.

(7) The independent actuary engaged by the state fund pursuant to 39-71-2330 shall project the unpaid claims liability for claims for injuries resulting from accidents that occurred before July 1, 1990, each fiscal year until all claims are paid.

History: En. Sec. 2, Ch. 4, Sp. L. May 1990; amd. Sec. 6, Ch. 797, L. 1991; amd. Sec. 6, Ch. 630, L. 1993; amd. Secs. 23, 24, Ch. 276, L. 1997; amd. Sec. 7, Ch. 184, L. 1999.

Compiler's Comments

1999 Amendment: Chapter 184 in (3) decreased $3 million to $1.25 million; inserted (4) defining adequately funded; inserted (5) providing for disposition of funds in excess of the adequate funding amount; inserted (6) providing for the transfer of funds for inadequately funded injury claims; and inserted (7) providing for the yearly projection of unpaid claims liability for claims for accidents that occurred before July 1, 1990. Amendment effective March 26, 1999.

39-71-2353. Repealed. Sec. 9, Ch. 797, L. 1991.

History: En. Sec. 4, Ch. 4, Sp. L. May 1990.

39-71-2354. Repealed. Secs. 31(2), 34(3), Ch. 276, L. 1997.

History: En. Sec. 1, Ch. 797, L. 1991; amd. Sec. 9, Ch. 637, L. 1993; amd. Sec. 38, Ch. 422, L. 1997.

39-71-2355. Repealed. Secs. 31(2), 34(3), Ch. 276, L. 1997.

History: En. Sec. 2, Ch. 797, L. 1991; repealed Sec. 31(2), Ch. 276, L. 1997.

39-71-2356. Mutually agreeable lump-sum settlements. During the period beginning October 1, 1991, and ending September 30, 1992, a workers' compensation claimant and the state fund may, regardless of the lump-sum law in effect on the date of the injury, mutually agree to a lump-sum settlement of a claim. If a mutual agreement is not reached, the lump-sum law in effect on the date of the injury applies.

History: En. Sec. 3, Ch. 797, L. 1991.

39-71-2357 through 39-71-2360 reserved.

39-71-2361. Legislative audit of state fund. The legislative auditor shall annually conduct or have conducted a financial and compliance audit of the state fund, including its operations relating to claims for injuries resulting from accidents that occurred before July 1, 1990. The audit must include evaluations of the claims reservation process, the amounts reserved, and the current report of the state fund's actuary. The evaluations may be conducted by persons appointed under 5-13-305. Audit and evaluation costs are an expense of and must be paid by the state fund and must be allocated between those claims for injuries resulting from accidents that occurred before July 1, 1990, and those claims for injuries resulting from accidents that occur on or after that date.

History: En. Sec. 5, Ch. 4, Sp. L. May 1990.

39-71-2362. Authority of legislative auditor with respect to state fund. The legislative auditor shall review rates established by the board to determine if the rates are excessive, inadequate, or unfairly discriminatory. Each year, the legislative auditor shall:

(1) examine the state fund beginning no sooner than October 1 following the end of the fiscal year; and

(2) report the findings of the examination and rate review to the governor, the legislature, and the board of directors of the state fund.

History: En. Sec. 8, Ch. 630, L. 1993.

39-71-2363. Agency law — submission of budget — annual report. (1) The state fund is subject to state laws applying to state agencies, except as otherwise provided by law, and it is exempt from the provisions of The Legislative Finance Act in Title 5, chapter 12, and the provisions of Title 17, chapter 7, parts 1 through 4. The state fund may use the debt collection procedures provided in Title 17, chapter 4, part 1.

(2) (a) Except as provided in 2-15-2015, the executive director shall annually submit to the board for its approval an estimated budget of the entire expense of administering the state fund for the succeeding fiscal year, with due regard to the business interests and contract obligations of the state fund. The administrative expenditures approved by the board may not exceed 15% of the earned annual premium of the prior fiscal year. A copy of the approved budget must be delivered to the governor and the legislature.

(b) The board may approve administrative expenditures in excess of 15% of the earned annual premium of the prior fiscal year, but the excess amount approved may not exceed one-half of the investment income earned in the prior fiscal year.

(c) Upon approval of the estimated budget for the succeeding fiscal year, the state fund shall, no later than October 1 of each year, submit the approved annual budget for review to the legislative finance committee established under 5-12-201.

(d) Dividends may not be included as administrative expenditures as provided in subsection (2)(a), but are a disbursement of excess surplus pursuant to 39-71-2323 after a determination by the state fund of income from operations.

(3) The board shall submit an annual financial report to the governor and to the legislature as provided in 5-11-210, indicating the business done by the state fund during the previous year and containing a statement of the estimated liabilities of the state fund as determined by an independent actuary.

History: En. Sec. 9, Ch. 630, L. 1993; amd. Sec. 4, Ch. 424, L. 1995; amd. Sec. 25, Ch. 276, L. 1997.

Part 24

Mediation

Part Cross-References

Uniform Arbitration Act, Title 27, ch. 5.

39-71-2401. Disputes — jurisdiction — settlement requirements — mediation. (1) A dispute concerning benefits arising under this chapter or chapter 72, other than the disputes described in subsection (2), must be brought before a department mediator as provided in this part. If a dispute still exists after the parties satisfy the mediation requirements in this part, either party may petition the workers' compensation court for a resolution.

(2) A dispute arising under this chapter that does not concern benefits or a dispute for which a specific provision of this chapter gives the department jurisdiction must be brought before the department.

(3) An appeal from a department order may be made to the workers' compensation court.

(4) Except as otherwise provided in this chapter, before a party may bring a dispute concerning benefits before a mediator, the parties shall attempt to settle as follows:

(a) The party making a demand shall present the other party with a specific written demand that contains sufficient explanation and documentary evidence to enable the other party to thoroughly evaluate the demand.

(b) The party receiving the demand shall respond in writing within 15 working days of receipt. If the demand is denied in whole or in part, the response shall state the basis of the denial.

(c) Upon motion of a party or upon the mediator's own motion, the mediator has the authority to dismiss a petition if he finds that either party did not comply with this subsection. A decision dismissing a petition under this subsection must be in writing and must state in detail the grounds for dismissal. The mediator's decision may be reviewed by the workers' compensation court upon motion of a party.

(d) Nothing in this subsection relieves a party of an obligation otherwise contained in this chapter.

History: En. Sec. 8, Ch. 464, L. 1987; amd. Sec. 1, Ch. 427, L. 1989; amd. Sec. 64, Ch. 613, L. 1989; amd. Sec. 10, Ch. 558, L. 1991.

39-71-2402 through 39-71-2405 reserved.

39-71-2406. Purpose. The purpose of this part is to prevent when possible the filing in the workers' compensation court of actions by claimants or insurers relating to claims under chapter 71 or 72 of this title if an equitable and reasonable resolution of the dispute may be effected at an earlier stage. To achieve this purpose, this part provides for a procedure for mandatory, nonbinding mediation. It is the intent of this part that the mediation process be used to resolve cases on an informal basis at minimal cost to the parties, and to this end, the parties are required to fully present their cases at the mediation level. However, if a cause proceeds to the workers' compensation court, the parties are not precluded from presenting additional evidence before the court. If a new issue is raised at the workers' compensation court that was not raised at mediation, the court shall remand the issue to the mediator for consideration.

History: En. Sec. 52, Ch. 464, L. 1987; amd. Sec. 2, Ch. 427, L. 1989.

39-71-2407. Department authority — rules. (1) The department shall designate mediators and shall implement the provisions of this part.

(2) The department may adopt the rules necessary to implement this part. The rules may prescribe:

(a) the qualifications of mediators; and

(b) a procedure for the conduct of mediation proceedings.

(3) The cost to the department of implementing this part must be paid out of the workers' compensation administration fund.

History: En. Sec. 53, Ch. 464, L. 1987.

39-71-2408. Mandatory, nonbinding mediation. (1) Except as otherwise provided, in a dispute arising under chapter 71 or 72 of this title, the insurer and claimant shall mediate any issue concerning benefits and the mediator shall issue a report following the mediation process recommending a solution to the dispute before either party may file a petition in the workers' compensation court.

(2) The resolution recommended by the mediator is without administrative or judicial authority and is not binding on the parties.

History: En. Sec. 54, Ch. 464, L. 1987.

39-71-2409. Duties of mediator. A mediator shall assist the parties in negotiating a resolution to their dispute by:

(1) facilitating an exchange of information between the parties;

(2) assuring that all relevant information is brought forth during the mediation process;

(3) suggesting possible solutions to issues of dispute between the parties;

(4) recommending a solution; and

(5) assisting the parties to voluntarily resolve their dispute.

History: En. Sec. 55, Ch. 464, L. 1987; amd. Sec. 3, Ch. 427, L. 1989.

39-71-2410. Limitations on mediation proceedings. (1) Except as may be necessary for the workers' compensation court to rule on issues arising under 39-71-2401(4)(c) or 39-71-2411(7)(c), mediation proceedings are:

(a) held in private;

(b) informal and held without a verbatim record; and

(c) confidential.

(2) All communications, verbal or written, from the parties to the mediator and any information and evidence presented to the mediator during the proceeding are confidential.

(3) A mediator's files and records are closed to all but the parties.

(4) (a) A mediator may not be called to testify in any proceeding concerning the issues discussed in the mediation process.

(b) Neither the mediator's report nor any of the information or recommendations contained in it are admissible as evidence in any action subsequently brought in any court of law.

(5) Notwithstanding subsections (1) through (4), a mediator may issue a report and the parties and the mediator may be required to attend a conference before the workers' compensation court as set forth in 39-71-2411.

History: En. Sec. 56, Ch. 464, L. 1987; amd. Sec. 4, Ch. 427, L. 1989; amd. Sec. 11, Ch. 558, L. 1991.

39-71-2411. Mediation procedure. (1) Except as otherwise provided, a claimant or an insurer having a dispute relating to benefits under chapter 71 or 72 of this title may petition the department for mediation of the dispute.

(2) A party may take part in mediation proceedings with or without representation.

(3) The mediator shall review the department file for the case and may receive any additional documentation or argument either party submits.

(4) The mediator shall request that each party offer argument summarizing the party's position. A party's argument must fully present the party's case. The argument is not limited by the rules of evidence.

(5) After the parties have presented all their information and argument to the mediator, the mediator shall recommend a solution to the parties within a reasonable time to be established by rule.

(6) A party shall notify the mediator within 25 days of the mailing of the mediator's report whether the party accepts the mediator's recommendation. If either party does not accept the mediator's recommendation, the party may petition the workers' compensation court for resolution of the dispute.

(7) (a) If a mediator determines that either party failed to cooperate in the mediation process, the mediator shall prepare a written report setting forth the determination and the grounds for the determination. The report must be mailed to the parties and to the workers' compensation court. Unless a party disputes the determination as set forth in subsection (7)(c), the parties shall repeat the mediation process, but only one time.

(b) A mediator may determine that a party has failed to cooperate in the mediation process only if the party failed to:

(i) supply information or offer a summary of the party's position as reasonably requested by the mediator;

(ii) attend scheduled mediation conferences unless excused by the mediator; or

(iii) listen to and review the information and position offered by the opposing party.

(c) If a party disputes a mediator's determination that the party failed to cooperate in the mediation process, the party may file a petition with the workers' compensation court. Upon receipt of a petition, the court shall summon the parties and the mediator to determine by oral discussion whether the mediator's determination of noncooperation is supportable. If the court finds that the mediator's determination is supportable, the court may order the parties to attempt a second time to mediate their dispute.

History: En. Sec. 57, Ch. 464, L. 1987; amd. Sec. 5, Ch. 427, L. 1989; amd. Sec. 64, Ch. 613, L. 1989; amd. Sec. 20, Ch. 516, L. 1995.

Part 25

Employer's Old Fund Liability Tax (Repealed)

39-71-2501. Repealed. Secs. 31(2), 34(3), Ch. 276, L. 1997.

History: En. Sec. 1, Ch. 664, L. 1987; amd. Sec. 57, Ch. 83, L. 1989; amd. Sec. 43, Ch. 613, L. 1989; amd. Sec. 14, Ch. 4, Sp. L. May 1990; amd. Sec. 14, Ch. 630, L. 1993; amd. Sec. 2, Ch. 637, L. 1993; amd. Sec. 2, Ch. 172, L. 1995; amd. Sec. 1, Ch. 246, L. 1995; amd. Sec. 48, Ch. 509, L. 1995; amd. Sec. 6, Ch. 572, L. 1995; amd. Sec. 26, Ch. 276, L. 1997; amd. Sec. 31, Ch. 491, L. 1997.

39-71-2502. Repealed. Secs. 31(2), 34(3), Ch. 276, L. 1997.

History: En. Sec. 2, Ch. 664, L. 1987; amd. Sec. 15, Ch. 4, Sp. L. May 1990; amd. Sec. 3, Ch. 637, L. 1993; repealed Sec. 31(2), Ch. 276, L. 1997.

39-71-2503. Repealed. Secs. 31(2), 34(3), Ch. 276, L. 1997.

History: En. Sec. 3, Ch. 664, L. 1987; amd. Sec. 16, Ch. 4, Sp. L. May 1990; amd. Sec. 1, Ch. 220, L. 1991; amd. Sec. 7, Ch. 797, L. 1991; amd. Sec. 4, Ch. 637, L. 1993; amd. Sec. 3, Ch. 172, L. 1995; amd. Sec. 2, Ch. 246, L. 1995; amd. Sec. 49, Ch. 509, L. 1995; amd. Sec. 6, Ch. 529, L. 1995; amd. Sec. 7, Ch. 572, L. 1995; amd. Sec. 27, Ch. 276, L. 1997; amd. Sec. 39, Ch. 422, L. 1997; amd. Secs. 32, 33, 39(2), Ch. 491, L. 1997.

39-71-2504. Repealed. Sec. 31(1), Ch. 276, L. 1997.

History: En. Sec. 4, Ch. 664, L. 1987; amd. Sec. 10, Ch. 9, Sp. L. June 1989; amd. Sec. 17, Ch. 4, Sp. L. May 1990; amd. Sec. 8, Ch. 797, L. 1991; amd. Sec. 33, Ch. 455, L. 1993; amd. Sec. 6, Ch. 637, L. 1993; amd. Sec. 47, Ch. 18, L. 1995; amd. Sec. 50, Ch. 509, L. 1995.

39-71-2505. Repealed. Sec. 8, Ch. 184, L. 1999.

History: En. Sec. 5, Ch. 637, L. 1993; amd. Sec. 1, Ch. 27, L. 1995; amd. Sec. 28, Ch. 276, L. 1997; amd. Sec. 34, Ch. 491, L. 1997.

39-71-2506. Repealed. Secs. 31(2), 34(3), Ch. 276, L. 1997.

History: En. Sec. 3, Ch. 572, L. 1995; repealed Sec. 31(2), Ch. 276, L. 1997.

39-71-2507. Repealed. Sec. 8, Ch. 184, L. 1999.

History: En. Sec. 6, Ch. 491, L. 1997.

Part 26

Self-Insurers Guaranty Fund

Part Cross-References

Insurance guaranty associations, Title 33, ch. 10.

39-71-2601. Short title. This part may be cited as the "Montana Self-Insurers Guaranty Fund Act".

History: En. Sec. 1, Ch. 244, L. 1989.

39-71-2602. Purpose — construction. (1) The purposes of this part are to provide a mechanism for the payment of covered workers' compensation claims of employers bound by compensation plan No. 1 who are unable to pay the claims because of insolvency, to establish a fund from which the claims may be paid, and to establish a board to assess the cost of the protection among those employers.

(2) This part must be liberally construed to effect its purposes. The statement of its purposes constitutes an aid and a guide to the act's interpretation.

History: **En. Sec. 2, Ch. 244, L. 1989.**

39-71-2603. Definitions. As used in this part, unless the context requires otherwise, the following definitions apply:

(1) "Board" means the board of directors of the Montana self-insurers guaranty fund.

(2) "Fund" means the Montana self-insurers guaranty fund established pursuant to 39-71-2609.

(3) "Insolvent private self-insurer" means an employer:

(a) (i) that is unable to pay workers' compensation claims because:

(A) it has been determined to be insolvent by a court of competent jurisdiction; or

(B) bankruptcy proceedings have been instituted by or against it; or

(ii) whose claims are not being paid on its behalf; and

(b) whose security has been exhausted pursuant to 39-71-2108.

(4) "Member" means an employer bound by compensation plan No. 1 that participates in the Montana self-insurers guaranty fund.

(5) "Private self-insurer" means a private employer bound by compensation plan No. 1 that has secured the payment of workers' compensation claims pursuant to 39-71-2101.

History: **En. Sec. 3, Ch. 244, L. 1989.**

39-71-2604. Board of directors of fund. (1) There is a board of directors of the Montana self-insurers guaranty fund.

(2) The board consists of five members who are representatives of private self-insurers and who shall serve staggered 4-year terms.

(3) Board members are elected by the members of the fund, with each member having one vote.

(4) Board members may be reimbursed from the assets of the fund for the actual expenses incurred in connection with their duties as board members.

History: **En. Sec. 4, Ch. 244, L. 1989.**

39-71-2605 through 39-71-2608 reserved.

39-71-2609. Establishment of fund — employer participation required. (1) There is a nonprofit unincorporated legal entity, to be known as the Montana self-insurers guaranty fund, financed as provided in 39-71-2615 and 39-71-2616. The fund shall perform its functions under rules adopted by, and powers exercised through, the board established under 39-71-2604.

(2) A private self-insurer shall participate as a member in the fund as a condition of the authority to self-insure in this state under 39-71-2101.

History: **En. Sec. 5, Ch. 244, L. 1989; amd. Sec. 5, Ch. 163, L. 1991.**

39-71-2610. Rulemaking — powers of fund. (1) The board shall establish the rules necessary to carry out the purposes of this part and to meet the responsibilities of the fund.

(2) The fund may carry out its responsibilities directly or by contract. It may, if it considers necessary, purchase services and insurance and borrow funds.

(3) The fund may receive confidential information concerning the financial condition of a private self-insurer whose liabilities to pay compensation may devolve upon the fund. The board shall adopt rules to prevent dissemination of the information.

History: **En. Sec. 6, Ch. 244, L. 1989.**

39-71-2611. Duties, liabilities, and rights of fund. (1) The fund shall assume the workers' compensation obligations of a private self-insurer that come due after the private self-insurer has been determined to be an insolvent self-insurer.

(2) The fund is not liable for the payment of any penalties or interest assessed for any act or omission of a person acting on behalf of the fund.

(3) The fund is a party in interest in all proceedings involving workers' compensation claims against an insolvent private self-insurer whose workers' compensation obligations have been paid or assumed by the fund. The fund has the same rights and defenses as the insolvent private self-insurer, including but not limited to all of the following:

(a) to appear and deny, defend, and appeal a claim; and

(b) to receive notice of, investigate, adjust, compromise, settle, and pay a claim.

(4) The fund shall concur in department decisions relating to allowing an employer to self-insure.

History: **En. Sec. 7, Ch. 244, L. 1989; amd. Sec. 6, Ch. 163, L. 1991.**

39-71-2612 through 39-71-2614 reserved.

39-71-2615. Initial fee — assessment. (1) A private self-insurer shall pay to the fund an initial fee of $1,000 upon becoming a member. Thereafter, a member's financial obligation to the fund must be established by assessment as provided in subsection (2).

(2) The fund may assess each of its members a pro rata share of the amount necessary to carry out the purposes of this part. However, the total annual assessments in any calendar year may not exceed 5% of the indemnity compensation paid by each member during the previous calendar year. Funds obtained by assessment pursuant to this subsection may be used only for the purposes of this part.

(3) A former member is liable for assessments made by the fund for 3 years following the date the member's status as a private self-insurer is terminated, whether the termination is by action of the private self-insurer or the department. A former member's assessment must be based on the compensation paid during the last approval year immediately preceding the member's termination of its status as a private self-insurer.

(4) The board shall certify to the department the collection and receipt of assessments, noting any delinquencies. The board shall take appropriate action to collect a delinquent assessment.

History: **En. Sec. 8, Ch. 244, L. 1989; amd. Sec. 15, Ch. 555, L. 1993.**

39-71-2616. Reimbursement for obligations paid and assumed. (1) The fund shall obtain reimbursement from an insolvent private self-insurer up to the amount of the insolvent private self-insurer's workers' compensation obligations paid and assumed by the fund. This includes reimbursement for reasonable administrative and legal costs.

(2) This right, as subrogee of any claimants in any action to collect against the private self-insurer as the debtor, includes but is not limited to a right to a claim for wages and other necessities of life advanced to any claimants.

(3) The fund may obtain from the security deposit or proceeds of other workers' compensation insurance of an insolvent private self-insurer the amount of the insolvent private self-insurer's compensation obligations, including reasonable administrative and legal costs, paid or assumed by the fund.

(4) The fund may bring an action against any other insurance carrier and person to recover compensation paid and liability assumed by the fund, including but not limited to:

(a) any excess insurance carrier of the private self-insurer; and

(b) any person whose negligence or breach of any obligation contributed to any underestimation of the private self-insurer's total accrual of liability as reported to the department.

History: En. Sec. 9, Ch. 244, L. 1989.

39-71-2617. Tax exemption. The fund is exempt from payment of all fees and taxes levied by this state or by any city, county, or other political subdivision, except taxes levied on real or personal property.

History: En. Sec. 10, Ch. 244, L. 1989.

39-71-2618. Immunity. There is no liability on the part of, and no claim for relief of any nature may arise against, any member, the fund, its agents or employees, or the board for any action taken by them in the performance of their powers and duties under this part.

History: En. Sec. 11, Ch. 244, L. 1989.

39-71-2619. Notification of insolvency by private self-insurer. As a condition of the privilege to self-insure pursuant to Title 39, chapter 71, part 21, a private self-insurer shall agree in writing to notify the department and the fund within 24 hours of the filing of any bankruptcy or determination of insolvency relating to that private self-insurer.

History: En. Sec. 12, Ch. 244, L. 1989.

39-71-2620. Audit requirement. Biannually or within 6 months after the close of any fiscal year in which the fund has assumed the workers' compensation obligations of an insolvent private self-insurer, the fund shall:

(1) contract for an independent certified audit of the financial activities of the fund; and

(2) report on the financial status of the fund to the department and to fund members.

History: En. Sec. 13, Ch. 244, L. 1989.

Parts 27 and 28 reserved

Part 29
Workers' Compensation Judge

Part Cross-References
Definitions, 39-71-116.

39-71-2901. Location of office — court powers. (1) The principal office of the workers' compensation judge shall be in the city of Helena.

(2) The workers' compensation court has power to:

(a) preserve and enforce order in its immediate presence;

(b) provide for the orderly conduct of proceedings before it and its officers;

(c) compel obedience to its judgments, orders, and process in the same manner and by the same procedures as in civil actions in district court;

(d) compel the attendance of persons to testify; and

(e) punish for contempt in the same manner and by the same procedures as in district court.

History: En. 92-850 by Sec. 4, Ch. 537, L. 1975; R.C.M. 1947, 92-850; amd. Sec. 58, Ch. 464, L. 1987.

Cross-References
Rules describing agency organization and procedures, 2-4-201.

39-71-2902. Operating expenses. The workers' compensation judge may employ such employees as may be required to carry out the duties under this part. All expenditures of the workers' compensation judge, including but not limited to salaries, traveling expenses, office rent, office equipment, and supplies, shall be paid out of the workers' compensation administration fund.

History: En. 92-851 by Sec. 5, Ch. 537, L. 1975; R.C.M. 1947, 92-851.

39-71-2903. Administrative procedure act and rules of evidence applicable. All proceedings and hearings before the workers' compensation judge shall be in accordance with the appropriate provisions of the Montana Administrative Procedure Act. The workers' compensation judge is bound by common law and statutory rules of evidence.

History: En. 92-852 by Sec. 6, Ch. 537, L. 1975; R.C.M. 1947, 92-852(1); amd. Sec. 59, Ch. 464, L. 1987.

Cross-References
Montana Administrative Procedure Act, Title 2, ch. 4.

39-71-2904. Direct appeal to supreme court. Notwithstanding 2-4-701 through 2-4-704, an appeal from a final decision of the workers' compensation judge shall be filed directly with the supreme court of Montana in the manner provided by law for appeals from the district court in civil cases.

History: En. 92-852 by Sec. 6, Ch. 537, L. 1975; R.C.M. 1947, 92-852(2).

39-71-2905. Petition to workers' compensation judge — time limit on filing. (1) A claimant or an insurer who has a dispute concerning any benefits under chapter 71 of this title may petition the workers' compensation judge for a determination of the dispute after satisfying dispute resolution requirements otherwise provided in this chapter. In addition, the district court that has jurisdiction over a pending action under 39-71-515 may request the workers' compensation judge to determine the amount of recoverable damages due to the employee. The judge, after a hearing, shall make a determination of the dispute in accordance with the law as set forth in chapter 71 of this title. If the dispute relates to benefits due to a claimant under chapter 71, the judge shall fix and determine any benefits to be paid and specify the manner of payment. After parties have satisfied dispute resolution requirements provided elsewhere in this chapter, the workers' compensation judge has exclusive jurisdiction to make determinations concerning disputes under chapter 71, except as provided in 39-71-317 and 39-71-516. The penalties and assessments allowed against an insurer under chapter 71 are the exclusive penalties and assessments that can be assessed by the workers' compensation judge against an insurer for disputes arising under chapter 71.

(2) A petition for hearing before the workers' compensation judge must be filed within 2 years after benefits are denied.

History: En. 92-848 by Sec. 2, Ch. 537, L. 1975; R.C.M. 1947, 92-848(1); amd. Sec. 4, Ch. 63, L. 1979; amd. Sec. 11, Ch. 601, L. 1985; amd. Sec. 60, Ch. 464, L. 1987; amd. Sec. 21, Ch. 516, L. 1995; amd. Sec. 29, Ch. 276, L. 1997.

39-71-2906. Repealed. Sec. 68, Ch. 464, L. 1987.

History: En. 92-848 by Sec. 2, Ch. 537, L. 1975; R.C.M. 1947, 92-848(2).

39-71-2907. Increase in award for unreasonable delay or refusal to pay. (1) The workers' compensation judge may increase by 20% the full amount of benefits due a claimant during the period of delay or refusal to pay, when:

(a) the insurer agrees to pay benefits but unreasonably delays or refuses to make the agreed-upon payments to the claimant; or

(b) prior or subsequent to the issuance of an order by the workers' compensation judge granting a claimant benefits, the insurer unreasonably delays or refuses to make the payments.

(2) The question of unreasonable delay or refusal shall be determined by the workers' compensation judge, and such a finding constitutes good cause to rescind, alter, or amend any order, decision, or award previously made in the cause for the purpose of making the increase provided herein.

(3) A finding of unreasonableness under this section does not constitute a finding that the insurer acted in bad faith or violated the unfair trade practices provisions of Title 33, chapter 18.

History: En. 92-849 by Sec. 3, Ch. 537, L. 1975; R.C.M. 1947, 92-849; amd. Sec. 5, Ch. 63, L. 1979; amd. Sec. 61, Ch. 464, L. 1987; amd. Sec. 1, Ch. 174, L. 1991.

39-71-2908. Repealed. Sec. 68, Ch. 464, L. 1987.

History: En. 92-848 by Sec. 2, Ch. 537, L. 1975; R.C.M. 1947, 92-848(3).

39-71-2909. Authority to review, diminish, or increase awards. The judge may, upon the petition of a claimant or an insurer that the disability of the claimant has changed or that the claimant received benefits through fraud or deception, review, diminish, or increase, in accordance with the law on benefits as set forth in chapter 71 of this title, any benefits previously awarded by the judge. An insurer's petition alleging that the claimant received benefits through fraud or deception must be filed within 2 years after the insurer discovers the fraud or deception.

History: En. 92-848 by Sec. 2, Ch. 537, L. 1975; R.C.M. 1947, 92-848(4); amd. Sec. 6, Ch. 63, L. 1979; amd. Sec. 62, Ch. 464, L. 1987; amd. Sec. 2, Ch. 235, L. 1995.

39-71-2910. Stay pending posttrial motions and appeal. (1) Upon the filing of a judgment or order of the workers' compensation judge, a party may apply to the workers' compensation judge, upon notice or ex parte, for a stay of execution of the judgment or order. The stay may be for a period of time and be under conditions as the judge considers proper. A stay of execution under this subsection may not extend for more than 30 days following the judge's disposition of posttrial motions.

(2) The appellant may request of the workers' compensation judge or the supreme court, upon service of a notice of appeal, a stay of execution of the judgment or order pending resolution of the appeal. The appellant may request a stay by presenting a supersedeas bond to the workers' compensation judge and obtaining his approval of the bond. The bond must have two sufficient sureties or a corporate surety as authorized by law. A court granting a stay may waive the bond requirement. The procedure for requesting a stay and posting a supersedeas bond must be the same as the procedure in Rule 7(b), Montana Rules of Appellate Procedure.

History: En. Sec. 1, Ch. 74, L. 1989.

39-71-2911. Stay pending determination by district court. Upon a motion and filing of an affidavit by either party and after a hearing, the workers' compensation judge may grant a stay of proceedings in the workers' compensation court if a criminal action involving workers' compensation insurance fraud by a claimant has been filed in district court.

History: En. Sec. 1, Ch. 243, L. 1995.

39-71-2912 and 39-71-2913 reserved.

39-71-2914. Signing of petitions, pleadings, motions, and other papers — requirements — sanctions. (1) Every petition, pleading, motion, or other paper of a party appearing before the workers' compensation court and represented by an attorney must be signed by at least one attorney of record in his individual name. The signer's address also must be stated.

(2) A party who is not represented by an attorney shall sign his petition, pleading, motion, or other paper and state his address.

(3) The signature of an attorney or party constitutes a certificate by him that:

(a) he has read the petition, pleading, motion, or other paper;

(b) to the best of his knowledge, information, and belief formed after reasonable inquiry, it is well grounded in fact;

(c) it is warranted by existing law or by a good faith argument for the extension, modification, or reversal of existing law; and

(d) it is not interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation.

(4) If a petition, pleading, motion, or other paper is signed in violation of this section, the court, upon motion or upon its own initiative, shall impose an appropriate sanction upon the person who signed it, a represented party, or both. The sanction may include an order to pay to the other party or parties the amount of the reasonable expense incurred because of the filing of the petition, pleading, motion, or other paper, including reasonable attorney fees.

History: En. Sec. 63, Ch. 464, L. 1987.

CHAPTER 72

OCCUPATIONAL DISEASE ACT OF MONTANA

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Part 1
General Provisions

39-72-101. Short title. This chapter may be cited as the "Occupational Disease Act of Montana".

History: En. Sec. 1, Ch. 155, L. 1959; R.C.M. 1947, 92-1301; amd. Sec. 84, Ch. 397, L. 1979.

39-72-102. Definitions. As used in this chapter, unless the context requires otherwise, the following definitions apply:

(1) "Beneficiary" is as defined in 39-71-116.

(2) "Child" is as defined in 39-71-116.

(3) "Department" means the department of labor and industry.

(4) "Disablement" means the event of becoming physically incapacitated by reason of an occupational disease from performing work in the worker's job pool. Silicosis, when complicated by active pulmonary tuberculosis, is presumed to be total disablement. "Disability", "total disability", and "totally disabled" are synonymous with "disablement", but they have no reference to "permanent partial disability".

(5) "Employee" is as defined in 39-71-118.

(6) "Employer" is as defined in 39-71-117.

(7) "Independent contractor" is as defined in 39-71-120.

(8) "Insurer" is as defined in 39-71-116.

(9) "Invalid" is as defined in 39-71-116.

(10) "Occupational disease" means harm, damage, or death as set forth in 39-71-119(1) arising out of or contracted in the course and scope of employment and caused by events occurring on more than a single day or work shift. The term does not include a physical or mental condition arising from emotional or mental stress or from a nonphysical stimulus or activity.

(11) "Order" is as defined in 39-71-116.

(12) "Pneumoconiosis" means a chronic dust disease of the lungs arising out of employment in coal mines and includes anthracosis, coal workers' pneumoconiosis, silicosis, or anthracosilicosis arising out of such employment.

(13) "Silicosis" means a chronic disease of the lungs caused by the prolonged inhalation of silicon dioxide (SiO_2) and characterized by small discrete nodules of fibrous tissue similarly disseminated throughout both lungs, causing the characteristic x-ray pattern, and by other variable clinical manifestations.

(14) "Wages" is as defined in 39-71-123.

(15) "Year" is as defined in 39-71-116.

History: (1) thru (10), (12) thru (17)En. 92-1303.1 by Sec. 1, Ch. 208, L. 1977; Sec. 92-1303.1, R.C.M. 1947; (11)En. Sec. 4, Ch. 155, L. 1959; amd. Sec. 1, Ch. 95, L. 1965; amd. Sec. 1, Ch. 41, L. 1971; Sec. 92-1304, R.C.M. 1947; R.C.M. 1947, 92-1303.1, 92-1304; amd. Sec. 1, Ch. 104, L. 1979; amd. Sec. 85, Ch. 397, L. 1979; amd. Sec. 64, Ch. 464, L. 1987; amd. Sec. 64, Ch. 613, L. 1989; amd. Sec. 8, Ch. 480, L. 1991.

Cross-References

Eligibility for silicosis benefits — relationship to this chapter, 39-73-104.

39-72-103. No vested right to compensation. The right to the compensation provided for herein shall not nor shall the rate or amount thereof be or become vested or continuing rights in persons awarded compensation under this chapter or any amendment hereof, but the state reserves the right, by act of the legislature, to reduce the rate or amount of compensation thereafter to be received by any person theretofore or thereafter receiving compensation under this chapter or any amendment hereof or to wholly discontinue to all persons all compensation provided for by this chapter or any amendment hereof.

History: En. Sec. 67, Ch. 155, L. 1959; R.C.M. 1947, 92-1367.

39-72-104. Repealed. Sec. 68, Ch. 464, L. 1987.

History: En. Sec. 68, Ch. 155, L. 1959; R.C.M. 1947, 92-1368.

Part 2
Administrative Provisions

Part Cross-References

Definitions, 39-71-116, 39-72-102.

39-72-201. Administration of chapter. This chapter is administered by the department.

History: En. Sec. 2, Ch. 155, L. 1959; amd. Sec. 188, Ch. 147, L. 1963; amd. Sec. 43, Ch. 182, L. 1975; R.C.M. 1947, 92-1302; amd. Sec. 37, Ch. 613, L. 1989.

39-72-202. Powers of department. The department is hereby vested with full power, authority, and jurisdiction to do and perform any and all things, whether herein specifically designated or in addition thereto, which are necessary or convenient in the exercise of any power, authority, or jurisdiction conferred upon it under this chapter.

History: En. Sec. 52, Ch. 155, L. 1959; amd. Sec. 24, Ch. 208, L. 1977; R.C.M. 1947, 92-1352; amd. Sec. 64, Ch. 613, L. 1989.

39-72-203. Department to adopt rules. Subject to the provisions of this chapter, the department shall adopt and publish rules governing procedure before it and shall prescribe forms of notice and manner of serving the same in all claims for compensation and may change the same from time to time at its discretion.

History: En. Sec. 45, Ch. 155, L. 1959; R.C.M. 1947, 92-1345; amd. Sec. 64, Ch. 613, L. 1989.

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

39-72-204. Claim forms to be prescribed by department. Claims for compensation under this chapter shall be filed on forms prescribed and provided for by the department and shall be filed in the same manner as claims for compensation under the Workers' Compensation Act unless otherwise provided in this chapter.

History: En. Sec. 46, Ch. 155, L. 1959; amd. Sec. 23, Ch. 208, L. 1977; R.C.M. 1947, 92-1346; amd. Sec. 64, Ch. 613, L. 1989.

39-72-205. Repealed. Sec. 19, Ch. 104, L. 1979.

History: En. Sec. 58, Ch. 155, L. 1959; amd. Sec. 173, Ch. 147, L. 1963; amd. Sec. 25, Ch. 208, L. 1977; R.C.M. 1947, 92-1358.

39-72-206. Legal action by department. Upon request of the department, the attorney general shall institute and prosecute actions for the enforcement of the provisions of this chapter or for any penalty provided for in this chapter. The attorney general shall prosecute or defend all actions brought by or against the department in its official capacity. The department may compromise any action brought under this chapter.

History: En. Sec. 43, Ch. 155, L. 1959; amd. Sec. 189, Ch. 147, L. 1963; amd. Sec. 22, Ch. 208, L. 1977; R.C.M. 1947, 92-1343; amd. Sec. 64, Ch. 613, L. 1989.

Cross-References

Duties of Attorney General, 2-15-501.

Part 3
Coverage and Liability

Part Cross-References

Definitions, 39-71-116, 39-72-102.

Employer defined, 39-71-117.

39-72-301. Who subject to chapter. This chapter shall apply to and only to all employers and employees who now are or hereafter will be subject to the provisions of the Workers' Compensation Act of the state of Montana.

History: En. Sec. 7, Ch. 155, L. 1959; R.C.M. 1947, 92-1307(part).

39-72-302. Employer liability. There is imposed on every employer subject to this chapter a liability for the payment of compensation as herein provided.

History: En. Sec. 66, Ch. 155, L. 1959; R.C.M. 1947, 92-1366.

39-72-303. Which employer liable. (1) Where compensation is payable for an occupational disease, the only employer liable is the employer in whose employment the employee was last injuriously exposed to the hazard of the disease.

(2) When there is more than one insurer and only one employer at the time the employee was injuriously exposed to the hazard of the disease, the liability rests with the insurer providing coverage at the earlier of:

(a) the time the occupational disease was first diagnosed by a treating physician or medical panel; or

(b) the time the employee knew or should have known that the condition was the result of an occupational disease.

(3) In the case of pneumoconiosis, any coal mine operator who has acquired a mine in the state or substantially all of the assets of a mine from a person who was an operator of the mine on or after December 30, 1969, is liable for and shall secure the payment of all benefits that would have been payable by that person with respect to miners previously employed in the mine if acquisition had not occurred and that person had continued to operate the mine, and the prior operator of the mine is not relieved of any liability under this section.

History: En. Sec. 10, Ch. 155, L. 1959; amd. Sec. 2, Ch. 190, L. 1971; R.C.M. 1947, 92-1310; amd. Sec. 1, Ch. 112, L. 1985; amd. Sec. 5, Ch. 619, L. 1993.

39-72-304. Repealed. Sec. 13, Ch. 558, L. 1991.

History: En. Sec. 30, Ch. 155, L. 1959; amd. Sec. 16, Ch. 208, L. 1977; R.C.M. 1947, 92-1330(2) thru (7); amd. Sec. 64, Ch. 613, L. 1989.

39-72-305. Right to compensation exclusive remedy — uninsured employers. (1) The right to recover compensation pursuant to the provisions of this chapter for occupational diseases sustained by an employee and arising out of and in the course of employment, whether resulting in death or not, is the exclusive remedy therefor against an employer who is properly insured under the Workers' Compensation Act and the Occupational Disease Act of Montana.

(2) The provisions of the Workers' Compensation Act relating to uninsured employers and benefits due uninsured claimants apply to and are incorporated as part of this chapter.

History: En. Sec. 8, Ch. 155, L. 1959; R.C.M. 1947, 92-1308; amd. Sec. 2, Ch. 104, L. 1979.

39-72-306 through 39-72-309. Repealed. Sec. 19, Ch. 104, L. 1979.

Compiler's Comments

Histories of Repealed Sections:

39-72-306. En. Sec. 30, Ch. 155, L. 1959; amd. Sec. 16, Ch. 208, L. 1977; R.C.M. 1947, 92-1330(1).

39-72-307. En. Sec. 41, Ch. 155, L. 1959; R.C.M. 1947, 92-1341.

39-72-308. En. Sec. 31, Ch. 155, L. 1959; R.C.M. 1947, 92-1331.

39-72-309. En. Sec. 39, Ch. 155, L. 1959; amd. Sec. 20, Ch. 208, L. 1977; R.C.M. 1947, 92-1339.

39-72-310. Occupational disease coverage under workers' compensation plans. (1) Every employer enrolled under compensation plan No. 1, every insurer under compensation plan No. 2, and the state fund under compensation plan No. 3, all provided for under the Workers' Compensation Act, are considered to also provide full coverage for claims under this chapter. Any policy of insurance for workers' compensation coverage under the Workers' Compensation Act written by a private insurance carrier or the state fund is considered to provide full occupational disease coverage under the provisions of this chapter.

(2) Except as provided in this chapter, the department shall apply the appropriate provisions of Title 39, chapter 71, parts 21, 22, and 23, to the administration of The Occupational Disease Act of Montana in the same

manner as they are applied to the administration of the Workers' Compensation Act.

(3) Under compensation plan No. 3, any premiums and other receipts held by the state fund for occupational disease insurance coverage must be transferred to the workers' compensation industrial insurance account, and payments for occupational disease claims by the state fund must be paid out of the industrial insurance account.

History: En. 92-1334.1 by Sec. 17, Ch. 208, L. 1977; R.C.M. 1947, 92-1334.1; amd. Sec. 38, Ch. 613, L. 1989.

Part 4

Presentment and Payment of Claims Generally

Part Cross-References

Definitions, 39-71-116, 39-72-102.

Employer defined, 39-71-117.

39-72-401. Payment of compensation subject to provisions of chapter. When he has complied with other provisions of this chapter, compensation shall be paid to a claimant who becomes disabled by reason of occupational disease arising out of his employment, subject to the conditions set forth in this chapter.

History: En. Sec. 11, Ch. 155, L. 1959; amd. Sec. 1, Ch. 92, L. 1965; amd. Sec. 2, Ch. 208, L. 1977; R.C.M. 1947, 92-1311(part).

39-72-402. Practice and procedure — applicability of Workers' Compensation Act. (1) Except as otherwise provided in this chapter, the practice and procedure prescribed in the Workers' Compensation Act applies to all proceedings under this chapter.

(2) Sections 39-71-304, 39-71-403, 39-71-406, 39-71-409, 39-71-411 through 39-71-413, 39-71-742, and Title 39, chapter 71, part 9, which are contained in the Workers' Compensation Act, specifically apply to and are incorporated as part of this chapter.

History: En. Sec. 7, Ch. 155, L. 1959; R.C.M. 1947, 92-1307(part); amd. Sec. 3, Ch. 104, L. 1979; amd. Sec. 12, Ch. 558, L. 1991.

39-72-403. Time when claims must be presented. (1) When a claimant seeks benefits under this chapter, the claimant's claims for benefits must be presented in writing to the employer, the employer's insurer, or the department within 1 year from the date the claimant knew or should have known that the claimant's condition resulted from an occupational disease. When a beneficiary seeks benefits under this chapter, claims for death benefits must be presented in writing to the employer, the employer's insurer, or the department within 1 year from the date the beneficiaries knew or should have known that the decedent's death was related to an occupational disease.

(2) The insurer may, upon a reasonable showing by the claimant or a decedent's beneficiaries that the claimant or the beneficiaries could not have known that the claimant's condition or the employee's death was related to an occupational disease, waive the claim time requirement up to an additional 2 years.

(3) Any dispute regarding a claim filing time is considered a dispute that, after mediation pursuant to department rule, is subject to jurisdiction of the workers' compensation court.

History: En. 92-1312.1 by Sec. 3, Ch. 208, L. 1977; R.C.M. 1947, 92-1312.1; amd. Sec. 2, Ch. 112, L. 1985; amd. Sec. 64, Ch. 613, L. 1989; amd. Sec. 25, Ch. 243, L. 1995; amd. Sec. 21, Ch. 442, L. 1999.

Compiler's Comments

1999 Amendment: Chapter 442 near beginning of (2) substituted "insurer" for "department"; and inserted (3) concerning dispute regarding claim. Amendment effective April 23, 1999.

Retroactive Applicability: Section 31(2), Ch. 442, L. 1999, provided that this section applies retroactively, within the meaning of 1-2-109, to occupational diseases occurring before April 23, 1999, unless a party elects, after notification by the department of labor and industry, to remain in the contested case process.

39-72-404. False representation by employee concerning previous occupational disease. No compensation shall be payable for an occupational disease if the employee, at the time of entering the employment of the employer by whom the compensation would otherwise be payable, knowingly represented himself in writing as not having previously been disabled, laid off, or compensated in damages or otherwise because of such disease when the contrary is true.

History: En. Sec. 42, Ch. 155, L. 1959; R.C.M. 1947, 92-1342.

39-72-405. General limitations on payment of compensation. When an employee has an occupational disease incurred in and caused by the employment that is not yet disabling and is discharged or transferred from the employment in which the employee is engaged or when the employee ceases employment and it is medically inadvisable for the employee on account of a nondisabling occupational disease to continue in employment and the employee suffers wage loss by reason of the discharge, transfer, or cessation, compensation may be paid, not exceeding $10,000, by an agreement between the insurer and the claimant. If the parties fail to reach an agreement, the mediation procedures in Title 39, chapter 71, part 24, must be followed.

History: En. Sec. 11, Ch. 155, L. 1959; amd. Sec. 1, Ch. 92, L. 1965; amd. Sec. 2, Ch. 208, L. 1977; R.C.M. 1947, 92-1311(1)(a) thru (d); amd. Sec. 4, Ch. 104, L. 1979; amd. Sec. 3, Ch. 112, L. 1985; amd. Sec. 64, Ch. 613, L. 1989; amd. Sec. 16, Ch. 555, L. 1993; amd. Sec. 18, Ch. 377, L. 1999.

Compiler's Comments

1999 Amendment: Chapter 377 deleted former (1) that read: "(1) Compensation may not be paid when the last day of the injurious exposure of the employee to the hazard of the occupational disease has occurred prior to July 1, 1959"; near beginning of first sentence after "employee" deleted "in employment on or after January 1, 1959, because the employee" and near middle substituted "it is medically inadvisable" for "it is in fact, as determined by the medical panel, inadvisable"; and made minor changes in style. Amendment effective July 1, 1999.

39-72-406. Repealed. Sec. 5, Ch. 112, L. 1985.

History: En. Sec. 11, Ch. 155, L. 1959; amd. Sec. 1, Ch. 92, L. 1965; amd. Sec. 2, Ch. 208, L. 1977; R.C.M. 1947, 92-1311(2); amd. Sec. 5, Ch. 104, L. 1979.

39-72-407. Repealed. Sec. 5, Ch. 112, L. 1985.

History: En. Sec. 11, Ch. 155, L. 1959; amd. Sec. 1, Ch. 92, L. 1965; amd. Sec. 2, Ch. 208, L. 1977; R.C.M. 1947, 92-1311(3).

39-72-408. Proximate causation. Occupational diseases shall be deemed to arise out of the employment only if:

(1) there is a direct causal connection between the conditions under which the work is performed and the occupational disease;

(2) the disease can be seen to have followed as a natural incident of the work as a result of the exposure occasioned by the nature of the employment;

(3) the disease can be fairly traced to the employment as the proximate cause;

(4) the disease does not come from a hazard to which workmen would have been equally exposed outside of the employment;

(5) the disease is incidental to the character of the business and not independent of the relation of employer and employee.

History: En. Sec. 5, Ch. 155, L. 1959; amd. Sec. 1, Ch. 40, L. 1971; R.C.M. 1947, 92-1305.

Part 5

Standards for Determining Whether Death or Disability Due to Pneumoconiosis

Part Cross-References

Definitions, 39-71-116, 39-72-102.

Employer defined, 39-71-117.

Employee defined, 39-71-118.

39-72-501 through 39-72-508. Repealed. Sec. 19, Ch. 104, L. 1979.

Compiler's Comments

Histories of Repealed Sections:

39-72-501. En. 92-1315.2 by Sec. 7, Ch. 208, L. 1977; R.C.M. 1947, 92-1315.2.

39-72-502. En. Sec. 5, Ch. 190, L. 1971; R.C.M. 1947, 92-1315.1.

39-72-503 through 39-72-508. En. Sec. 15, Ch. 155, L. 1959; amd. Sec. 4, Ch. 190, L. 1971; amd. Sec. 6, Ch. 208, L. 1977; R.C.M. 1947, 92-1315(1) through (6).

39-72-509. Benefits for pneumoconiosis. Pneumoconiosis is an occupational disease that is compensable under this chapter. However, any benefits granted a claimant under this chapter for pneumoconiosis must be reduced, but not below zero, by an amount equal to the benefits granted the claimant under any program under federal law that pays benefits for a claimant suffering disability from pneumoconiosis.

History: En. Sec. 6, Ch. 104, L. 1979.

Part 6

Medical Examinations — Determining Compensability of Claims

Part Cross-References

Definitions, 39-71-116, 39-72-102.

Employer defined, 39-71-117.

Employee defined, 39-71-118.

39-72-601. Medical evaluators. (1) The department shall develop a list of physicians to serve as occupational disease medical evaluators. The list may include physicians nominated by the board of medical examiners. An evaluator must be certified by the physician's specialty board or be eligible for certification in the specialty area appropriate to the claimant's condition in relation to this chapter.

(2) The department shall select an evaluator to examine a claimant, as required.

History: En. Sec. 14, Ch. 155, L. 1959; amd. Sec. 4, Ch. 208, L. 1977; R.C.M. 1947, 92-1314; amd. Sec. 7, Ch. 104, L. 1979; amd. Sec. 1, Ch. 162, L. 1989; amd. Sec. 64, Ch. 613, L. 1989; amd. Sec. 22, Ch. 516, L. 1995; amd. Sec. 22, Ch. 442, L. 1999.

Compiler's Comments

1999 Amendment: Chapter 442 in (1) at end of first sentence substituted "medical evaluators" for "medical panel" and at beginning of third sentence substituted "An evaluator" for "A physician on the panel"; in (2) after "select" substituted "an evaluator" for "a panel physician" and deleted former second sentence that read: "The department shall appoint, as required, a physician as the presiding officer"; and made minor changes in style. Amendment effective April 23, 1999.

Retroactive Applicability: Section 31(2), Ch. 442, L. 1999, provided that this section applies retroactively, within the meaning of 1-2-109, to occupational diseases occurring before April 23, 1999, unless a party elects, after notification by the department of labor and industry, to remain in the contested case process.

39-72-602. Insurer may accept liability — procedure for medical examination when insurer has not accepted liability. (1) An insurer may accept liability for a claim under this chapter based on information submitted to it by a claimant.

(2) In order to determine the compensability of claims under this chapter when an insurer has not accepted liability, the following procedure must be followed:

(a) The department shall direct the claimant to an evaluator on the list of physicians for an examination. The evaluator shall conduct an examination to determine whether the claimant is totally disabled and is suffering from an occupational disease. In the case of a fatality, the evaluator shall examine the records to determine if the death was caused by an occupational disease. The evaluator shall submit a report of the findings to the department.

(b) Within 7 working days of receipt, the department shall mail the report of the evaluator's findings to the insurer and claimant.

(c) Upon receipt of the report, if a dispute exists over initial compensability of an occupational disease, it is considered a dispute that, after mediation pursuant to department rule, is subject to the jurisdiction of the workers' compensation court.

History: En. 92-1314.1 by Sec. 5, Ch. 208, L. 1977; R.C.M. 1947, 92-1314.1(1); amd. Sec. 8, Ch. 104, L. 1979; amd. Sec. 64, Ch. 613, L. 1989; amd. Sec. 23, Ch. 516, L. 1995; amd. Sec. 23, Ch. 442, L. 1999.

Compiler's Comments

1999 Amendment: Chapter 442 in (2)(a) near middle of first sentence substituted "an evaluator on the list of physicians" for "a member of the medical panel", at beginning of second and fourth sentences substituted "evaluator" for "panel member", and inserted third sentence concerning case involving a fatality; substituted (2)(b) concerning mailing findings for former text that read: "(b) Either the claimant or the insurer may, within 20 days after the receipt of the report by the first panel member, request that the claimant be examined by a second panel member. If a second examination is requested, the department shall direct the claimant to a second panel member who shall conduct an examination to determine whether the claimant is totally disabled and is suffering from an occupational disease. The panel member shall submit a report of the member's findings to the department. The medical panel member may, in order to reach a conclusion, consult with the claimant's attending physician. The reports from the two examining physicians must be sent by the department to the presiding officer of the panel. The presiding officer shall issue a report concerning the claimant's physical condition and whether the claimant is suffering from an occupational disease"; substituted (2)(c) concerning jurisdiction over initial compensability for former text that read: "(i) If a second examination is not requested, the department shall issue its order determining whether the claimant is entitled to occupational disease benefits based on the report of the first examining physician.

(ii) If a second examination is requested, the department shall issue its order based on the report of the presiding officer. If the panel presiding officer has examined the claimant, the department shall appoint another presiding officer"; and made minor changes in style. Amendment effective April 23, 1999.

Retroactive Applicability: Section 31(2), Ch. 442, L. 1999, provided that this section applies retroactively, within the meaning of 1-2-109, to occupational diseases occurring before April 23, 1999, unless a party elects, after notification by the department of labor and industry, to remain in the contested case process.

39-72-603. Repealed. Sec. 19, Ch. 104, L. 1979.

History: En. 92-1314.1 by Sec. 5, Ch. 208, L. 1977; R.C.M. 1947, 92-1314.1(2).

39-72-604. Repealed. Sec. 19, Ch. 104, L. 1979.

History: En. Sec. 16, Ch. 155, L. 1959; amd. Sec. 8, Ch. 208, L. 1977; R.C.M. 1947, 92-1316.

39-72-605. When occupational disease causes death. When an occupational disease is claimed to have caused death and a claim for death benefits is filed therefor, the department shall select at least two physicians who in the department's judgment could properly determine the condition regarding the decedent's death in relation to a possible occupational disease, and the physicians shall examine all available evidence pertaining to the claim and shall make findings and report to the department. The report is prima facie evidence of fact as to the matters therein contained.

History: En. Sec. 17, Ch. 155, L. 1959; amd. Sec. 9, Ch. 208, L. 1977; R.C.M. 1947, 92-1317; amd. Sec. 9, Ch. 104, L. 1979; amd. Sec. 64, Ch. 613, L. 1989.

39-72-606. Autopsy. Upon the filing of a claim for compensation for death caused by an occupational disease if an autopsy is necessary to determine the cause of death, an autopsy shall be ordered by the department. The autopsy shall be made under the supervision of the county coroner or a medical examiner. The department may designate a duly licensed physician who is a specialist in such examinations to perform or attend the autopsies and to certify his findings thereon. The findings shall be examined by the physicians submitting a report under 39-72-605 before the final report under that section is submitted to the department.

History: En. Sec. 18, Ch. 155, L. 1959; amd. Sec. 10, Ch. 208, L. 1977; R.C.M. 1947, 92-1318; amd. Sec. 27, Ch. 7, L. 1979; amd. Sec. 10, Ch. 104, L. 1979; amd. Sec. 64, Ch. 613, L. 1989.

39-72-607. Periodic medical examinations. (1) Upon the request of the department or the insurer, each employee entitled to compensation shall submit to a medical examination from time to time by a physician designated by the department who is an evaluator on the department's list of physicians. The examination must be at a place reasonably convenient for the employee.

(2) The order directing the examination must fix a time and place having regard to the convenience of the employee, the employee's physical condition, and the employee's ability to attend. The employee and any other party in interest may have a physician present at the examination if the physician is provided and paid for by the employee or other party.

(3) If the employee refuses to submit to the examination or obstructs the examination, the employee's right to compensation is suspended until the examination has been made, and compensation is not payable during or for the period of suspension.

(4) A physician who makes or is present at the examination may be required to testify as to the result of the examination.

History: **En. Sec. 19, Ch. 155, L. 1959; amd. Sec. 11, Ch. 208, L. 1977; R.C.M. 1947, 92-1319(1) thru (4); amd. Sec. 64, Ch. 613, L. 1989; amd. Sec. 24, Ch. 442, L. 1999.**

Compiler's Comments

1999 Amendment: Chapter 442 in (1) at end of first sentence substituted "an evaluator on the department's list of physicians" for "a member of the appropriate medical panel"; and made minor changes in style. Amendment effective April 23, 1999.

Retroactive Applicability: Section 31(2), Ch. 442, L. 1999, provided that this section applies retroactively, within the meaning of 1-2-109, to occupational diseases occurring before April 23, 1999, unless a party elects, after notification by the department of labor and industry, to remain in the contested case process.

39-72-608. Payment of medical examination, report, and autopsy expenses. The expense of the medical examination and report, as provided in 39-72-602, must be paid by the insurer. The expense of the periodic medical examinations and reports, as provided in 39-72-607, must be paid by the party requesting the periodic medical examination. The expense of the autopsy, as provided for in 39-72-606, must be paid by the party requesting the autopsy. The expense of any examinations and reports, as provided in 39-72-605, must be paid by the party requesting the examination.

History: **En. Sec. 20, Ch. 155, L. 1959; amd. Sec. 12, Ch. 208, L. 1977; R.C.M. 1947, 92-1320; amd. Sec. 11, Ch. 104, L. 1979; amd. Sec. 2, Ch. 162, L. 1989; amd. Sec. 17, Ch. 555, L. 1993; amd. Sec. 19, Ch. 377, L. 1999; amd. Sec. 25, Ch. 442, L. 1999.**

Compiler's Comments

1999 Amendments — Composite Section: Chapter 377 at beginning of last sentence deleted "When the occupational disease causes death"; and made minor changes in style. Amendment effective July 1, 1999.

Chapter 442 in first sentence before "medical examination" deleted "first" and deleted former second sentence that read: "The expense of a reexamination and panel report must be borne by the dissatisfied party requesting the reexamination"; and made minor changes in style. Amendment effective April 23, 1999.

Retroactive Applicability: Section 31(2), Ch. 442, L. 1999, provided that this section applies retroactively, within the meaning of 1-2-109, to occupational diseases occurring before April 23, 1999, unless a party elects, after notification by the department of labor and industry, to remain in the contested case process.

39-72-609. Repealed. Sec. 26, Ch. 442, L. 1999.

History: **En. 92-1314.1 by Sec. 5, Ch. 208, L. 1977; R.C.M. 1947, 92-1314.1(3); amd. Sec. 64, Ch. 613, L. 1989.**

39-72-610. Repealed. Sec. 26, Ch. 442, L. 1999.

History: **En. 92-1314.1 by Sec. 5, Ch. 208, L. 1977; R.C.M. 1947, 92-1314.1(5); amd. Sec. 12, Ch. 104, L. 1979; amd. Sec. 64, Ch. 613, L. 1989.**

39-72-611. Repealed. Sec. 26, Ch. 442, L. 1999.

History: **En. 92-1314.1 by Sec. 5, Ch. 208, L. 1977; R.C.M. 1947, 92-1314.1(4); amd. Sec. 64, Ch. 613, L. 1989.**

39-72-612. Repealed. Sec. 26, Ch. 442, L. 1999.

History: **(1)En. 92-1314.1 by Sec. 5, Ch. 208, L. 1977; Sec. 92-1314.1, R.C.M. 1947; (2)En. Sec. 35, Ch. 155, L. 1959; amd. Sec. 172, Ch. 147, L. 1963; amd. Sec. 18, Ch. 208, L. 1977; Sec. 92-1335, R.C.M. 1947; R.C.M. 1947, 92-1314.1(6), 92-1335; amd. Sec. 13, Ch. 104, L. 1979; amd. Sec. 3, Ch. 162, L. 1989; amd. Sec. 64, Ch. 613, L. 1989; amd. Sec. 24, Ch. 516, L. 1995.**

39-72-613. Repealed. Sec. 26, Ch. 442, L. 1999.

History: **En. Sec. 14, Ch. 104, L. 1979; amd. Sec. 64, Ch. 613, L. 1989.**

Part 7
Compensation and Benefits

Part Cross-References

Definitions, 39-71-116, 39-72-102.
Employer defined, 39-71-117.
Employee defined, 39-71-118.
Occupational disease benefits exempt from medical services lien, 71-3-1118.

39-72-701. Compensation for total disability or death due to occupational disease other than pneumoconiosis. (1) The compensation to which an employee temporarily totally disabled or permanently totally disabled by an occupational disease other than pneumoconiosis, or the beneficiaries and dependents of the employee in the case of death caused by an occupational disease other than pneumoconiosis, are entitled under this chapter shall be the same payments which are payable to an injured employee, and such payments shall be made for the same period of time as is provided in cases of temporary total disability, permanent total disability, and in cases of injuries causing death under the Workers' Compensation Act.

(2) In cases where it is determined that periodic disability benefits granted by the Social Security Act are payable because of the disease, the weekly benefits payable under this section are reduced, but not below zero, by an amount equal as nearly as practical to one-half the federal periodic benefits for such week, which amount is to be calculated from the date of the disability social security entitlement.

History: En. Sec. 21, Ch. 155, L. 1959; amd. Sec. 6, Ch. 190, L. 1971; amd. Sec. 47, Ch. 535, L. 1975; R.C.M. 1947, 92-1321(part); amd. Sec. 88, Ch. 397, L. 1979; amd. Sec. 8, Ch. 21, L. 1981.

39-72-702. Repealed. Sec. 19, Ch. 104, L. 1979.

History: En. Sec. 21, Ch. 155, L. 1959; amd. Sec. 6, Ch. 190, L. 1971; amd. Sec. 47, Ch. 535, L. 1975; R.C.M. 1947, 92-1321(part); amd. Sec. 89, Ch. 397, L. 1979.

39-72-703. No compensation for partial disability. No compensation as provided in 39-72-701 is payable to an employee who is partially disabled from an occupational disease.

History: En. Sec. 22, Ch. 155, L. 1959; R.C.M. 1947, 92-1322; amd. Sec. 15, Ch. 104, L. 1979.

39-72-704. Medical and hospital expenses. In addition to the compensation provided by this chapter, an employee who becomes either totally or partially disabled from an occupational disease is entitled to receive, for treatment of the occupational disease, payment of medical expenses under Title 39, chapter 71.

History: En. Sec. 25, Ch. 155, L. 1959; amd. Sec. 15, Ch. 208, L. 1977; R.C.M. 1947, 92-1325; amd. Sec. 16, Ch. 104, L. 1979; amd. Sec. 64, Ch. 613, L. 1989; amd. Sec. 26, Ch. 243, L. 1995.

39-72-705. Burial expenses. In addition to and separate and apart from any other compensation or benefit provided for in this chapter, there shall be paid in case of death of an employee, which death is the result of an occupational disease contracted in the course of employment, the reasonable burial expenses of the employee, not exceeding the maximum amount provided for in 39-71-725.

History: En. Sec. 24, Ch. 155, L. 1959; amd. Sec. 14, Ch. 208, L. 1977; R.C.M. 1947, 92-1324.

39-72-706. Aggravation. (1) If an occupational disease is aggravated by any other disease or infirmity not itself compensable or if disability or death from any other cause not itself compensable is aggravated, prolonged, accelerated, or in any way contributed to by an occupational disease, the compensation payable under this chapter must be reduced and limited to such proportion only of the compensation that would be payable if the occupational disease were the sole cause of the disability or death as such occupational disease as a causative factor bears to all the causes of such disability or death.

(2) If compensation is reduced a proportionate amount as in subsection (1) and the worker receives disability social security benefits, the offset entitlement granted to the insurer must be reduced in the same proportionate amount as the compensation as long as the worker continues to receive disability social security benefits.

History: En. Sec. 26, Ch. 155, L. 1959; R.C.M. 1947, 92-1326; amd. Sec. 9, Ch. 21, L. 1981; amd. Sec. 4, Ch. 162, L. 1989.

39-72-707. Silicosis with complications. In cases of disability or death from silicosis complicated with tuberculosis of the lungs, compensation shall be payable as for disability or death from an uncomplicated silicosis. In case of disability or death from silicosis when complicated with any disease not compensable under this chapter and other than pulmonary tuberculosis, compensation shall be reduced as provided in 39-72-706.

History: En. Sec. 27, Ch. 155, L. 1959; R.C.M. 1947, 92-1327.

39-72-708. Prohibiting supplementing of benefits. No person receiving compensation or benefits under chapter 73 of this title is entitled to compensation or benefits under this chapter.

History: En. Sec. 32, Ch. 155, L. 1959; R.C.M. 1947, 92-1332(part); amd. Sec. 90, Ch. 397, L. 1979.

39-72-709. Diminution of compensation. Compensation payable pursuant to the terms of this chapter to the claimant, his beneficiaries, or dependents shall be diminished by the amount of any compensation paid or to be paid him or them under the Workers' Compensation Act of Montana or any other workers' compensation act.

History: En. Sec. 33, Ch. 155, L. 1959; R.C.M. 1947, 92-1333.

39-72-710. Repealed. Sec. 19, Ch.104, L. 1979.

History: En. Sec. 37, Ch. 155, L. 1959; amd. Sec. 19, Ch. 208, L. 1977; R.C.M. 1947, 92-1337.

39-72-711. Lump-sum and compromise settlements. (1) No final and binding award made upon any claim pursuant to this chapter may be converted into a lump-sum payment, in whole or in part, except as provided in this section or 39-72-712.

(2) Whenever there are contested issues as to an insurer's liability for a claim under this chapter, including a claim based on 39-72-405(2), a claimant and an insurer may enter into a full and final compromise settlement of the claim. However, no such settlements are binding on the parties until approved by the department. After the department approves a full and final compromise settlement, the claim is closed and the insurer's liability for a settled claim is forever released.

History: **En. Sec. 23, Ch. 155, L. 1959; amd. Sec. 13, Ch. 208, L. 1977; R.C.M. 1947, 92-1323(part); amd. Sec. 17, Ch. 104, L. 1979; amd. Sec. 4, Ch. 112, L. 1985; amd. Sec. 64, Ch. 613, L. 1989.**

39-72-712. Methods of deducting attorney's fee from compensation. If a claimant has entered into a contract of employment with an attorney for the recovery of benefits under this chapter and the terms of the employment contract are reasonable, the amount of the attorney's fee may be ordered by the department to be paid by the insurer and thereafter deducted proportionately from weekly payments thereafter to be made to the claimant under this chapter. The department may require payments to be deducted each week in an amount it considers advisable from the payments thereafter to be made to the claimant under this chapter and paid to the attorney as they are so deducted from the weekly payments to the claimant.

History: **En. Sec. 23, Ch. 155, L. 1959; amd. Sec. 13, Ch. 208, L. 1977; R.C.M. 1947, 92-1323(part); amd. Sec. 64, Ch. 613, L. 1989.**

39-72-713. Repealed. Sec. 19, Ch. 104, L. 1979.

History: **En. Sec. 29, Ch. 155, L. 1959; R.C.M. 1947, 92-1329.**

39-72-714. Reduction or suspension of compensation for unsanitary or injurious practices or refusal to submit to medical or surgical treatment. The insurer may reduce or suspend the compensation of a claimant who persists in unsanitary or injurious practices tending to imperil or retard recovery or who refuses to submit to medical or surgical treatment as is reasonably essential to promote the claimant's recovery. If a dispute arises between a claimant and an insurer regarding the reduction or suspension of compensation, the mediation procedures provided in Title 39, chapter 71, part 24, must be followed.

History: **En. Sec. 19, Ch. 155, L. 1959; amd. Sec. 11, Ch. 208, L. 1977; R.C.M. 1947, 92-1319(5); amd. Sec. 64, Ch. 613, L. 1989; amd. Sec. 20, Ch. 377, L. 1999.**

Compiler's Comments

1999 Amendment: Chapter 377 in first sentence at beginning substituted "The insurer" for "The department" and substituted "of a claimant" for "of an employee"; inserted second sentence requiring mediation procedures to be followed; and made minor changes in style. Amendment effective July 1, 1999.

CHAPTER 73

SILICOSIS BENEFITS

Part 1 — General Provisions

39-73-101. Definitions.
39-73-102. Administration — duties of department.
39-73-103. Conformity with acts of federal government.
39-73-104. Eligibility requirements for benefits.
39-73-105. Application for payment.
39-73-106. Investigation of applications.
39-73-107. Amount of payments.
39-73-108. Payment of benefits where person entitled is in institution.
39-73-109. Payment of benefits to surviving spouse.
39-73-110. Assistance not assignable or subject to legal process.
39-73-111. Representative payee — appointment — duties.

Part 1
General Provisions

Part Cross-References
Definitions, 39-73-101.

39-73-101. Definitions. (1) "Examining board" shall mean well-qualified physician or physicians, as designated by the department of labor and industry.

(2) The term "gainful occupation", as used herein, shall not be construed to mean occasional or intermittent light employment where the ability to do manual labor is not essential but shall mean any person having an income from any other source exceeding $150 per month.

(3) "Payments" means money payments to persons having silicosis as herein defined.

(4) "Silicosis" means a fibrotic condition of the lungs due to the inhalation of silica dust.

History: (1) thru (3)En. Sec. 1, Part 9, Ch. 82, L. 1937, as added by Sec. 1, Ch. 5, L. 1941; amd. Sec. 1, Ch. 225, L. 1961; amd. Sec. 1, Ch. 360, L. 1971; amd. Sec. 38, Ch. 182, L. 1975; Sec. 71-1001, R.C.M. 1947; (4)En. Sec. 3, Part 9, Ch. 82, L. 1937, as added by Sec. 1, Ch. 5, L. 1941; amd. Sec. 1, Ch. 68, L. 1945; amd. Sec. 1, Ch. 216, L. 1947; amd. Sec. 1, Ch. 192, L. 1949; amd. Sec. 1, Ch. 42, L. 1953; amd. Sec. 1, Ch. 252, L. 1955; amd. Sec. 1, Ch. 3, L. 1961; amd. Sec. 3, Ch. 225, L. 1961; amd. Sec. 1, Ch. 267, L. 1965; amd. Sec. 1, Ch. 125, L. 1967; amd. Sec. 1, Ch. 260, L. 1969; amd. Sec. 1, Ch. 105, L. 1971; amd. Sec. 2, Ch. 360, L. 1971; amd. Sec. 1, Ch. 504, L. 1973; Sec. 71-1003, R.C.M. 1947; R.C.M. 1947, 71-1001, 71-1003(part); amd. Sec. 64, Ch. 613, L. 1989.

39-73-102. Administration — duties of department. The department of labor and industry shall administer this chapter. The department shall:

(1) formulate a plan and adopt rules for the operation of this chapter;

(2) cooperate with the federal government in all matters of immediate concern pertaining to silicosis;

(3) designate the procedure to be followed in securing a competent medical examination for the purposes of determining silicosis in each individual applicant;

(4) designate suitable physicians or physician, well qualified to examine applicants for aid under this chapter;

(5) pay the actual transportation expenses of any applicant from the place of his residence in the state to the place of examination and return, from funds appropriated to the department for that purpose;

(6) develop and cooperate with other agencies in developing measures for the prevention of silicosis.

History: En. Sec. 2, Part 9, Ch. 82, L. 1937, as added by Sec. 1, Ch. 5, L. 1941; amd. Sec. 2, Ch. 225, L. 1961; amd. Sec. 39, Ch. 182, L. 1975; R.C.M. 1947, 71-1002; amd. Sec. 2, Ch. 370, L. 1989; amd. Sec. 64, Ch. 613, L. 1989.

Cross-References
Administrative rulemaking procedure, Title 2, ch. 4, parts 1 through 3.

39-73-103. Conformity with acts of federal government. If and when the government of the United States makes grants to states in aid of and allowing payments to persons having silicosis, as herein defined, the department of labor and industry is hereby authorized to administer in the state of Montana such grants-in-aid and payments in addition to grants made by this chapter. The total payments to any individual under this chapter shall not exceed $200 per month, exclusive of any grants made by congress.

History: En. Sec. 8, Part 9, Ch. 82, L. 1937, as added by Sec. 1, Ch. 5, L. 1941; amd. Sec. 3, Ch. 216, L. 1947; amd. Sec. 3, Ch. 192, L. 1949; amd. Sec. 2, Ch. 204, L. 1953; amd. Sec. 3, Ch. 252, L. 1955; amd. Sec. 2, Ch. 3, L. 1961; amd. Sec. 8, Ch. 225, L. 1961; amd. Sec. 3, Ch. 267, L. 1965; amd. Sec. 3, Ch. 125, L. 1967; amd. Sec. 3, Ch. 260, L. 1969; amd. Sec. 3, Ch. 105, L. 1971; amd. Sec. 3, Ch. 504, L. 1973; R.C.M. 1947, 71-1008; amd. Sec. 1, Ch. 559, L. 1981; amd. Sec. 64, Ch. 613, L. 1989.

39-73-104. Eligibility requirements for benefits. Payment shall be made under this chapter to any person who:

(1) has silicosis, as defined in 39-73-101, which results in his total disability so as to render it impossible for him to follow continuously any substantially gainful occupation;

(2) has resided in and been an inhabitant of the state of Montana for 10 years or more immediately preceding the date of the application;

(3) is not receiving, with respect to any month for which he would receive a payment under this chapter, compensation under The Occupational Disease Act of Montana, as provided by chapter 72 of this title, which will equal the sum of $200.

History: En. Sec. 3, Part 9, Ch. 82, L. 1937, as added by Sec. 1, Ch. 5, L. 1941; amd. Sec. 1, Ch. 68, L. 1945; amd. Sec. 1, Ch. 216, L. 1947; amd. Sec. 1, Ch. 192, L. 1949; amd. Sec. 1, Ch. 42, L. 1953; amd. Sec. 1, Ch. 252, L. 1955; amd. Sec. 1, Ch. 3, L. 1961; amd. Sec. 3, Ch. 225, L. 1961; amd. Sec. 1, Ch. 267, L. 1965; amd. Sec. 1, Ch. 125, L. 1967; amd. Sec. 1, Ch. 260, L. 1969; amd. Sec. 1, Ch. 105, L. 1971; amd. Sec. 2, Ch. 360, L. 1971; amd. Sec. 1, Ch. 504, L. 1973; R.C.M. 1947, 71-1003(part); amd. Sec. 2, Ch. 559, L. 1981.

39-73-105. Application for payment. Application for payment under this chapter shall be made by the person seeking such payment to the department of labor and industry. The application shall be in writing or reduced to writing in the manner and upon the form prescribed by the department. The application form may be filled in and written by a person authorized by the department. If the applicant is unable to sign his or her name on the application, a duly witnessed mark may be used.

History: En. Sec. 5, Part 9, Ch. 82, L. 1937, as added by Sec. 1, Ch. 5, L. 1941; amd. Sec. 5, Ch. 225, L. 1961; amd. Sec. 40, Ch. 182, L. 1975; R.C.M. 1947, 71-1005; amd. Sec. 64, Ch. 613, L. 1989.

39-73-106. Investigation of applications. (1) Whenever the department of labor and industry under this chapter receives an application for a payment, an investigation and record shall be promptly made of the validity of the claim. The object of such investigation shall be to ascertain whether or not the applicant is entitled to a payment under the provisions of this chapter and such other information as may be required by the rules of the department. The investigation of such applicant shall be conducted by representatives of the department. The physicians or physician designated by the department, as herein provided, shall constitute an examining board for such clinical, pathological, x-ray, and roentgen examinations as in the opinion of the examining board may be necessary to determine whether or not the applicant has silicosis, as herein defined. A certified report of such examination from the examining board of physicians or physician must be attached to the investigation report.

(2) Upon the completion of such investigation, the department shall determine whether or not the applicant is entitled to a payment under this chapter. The department shall then notify the applicant of its decision.

History: (1)En. Sec. 6, Part 9, Ch. 82, L. 1937, as added by Sec. 1, Ch. 5, L. 1941; amd. Sec. 6, Ch. 225, L. 1961; amd. Sec. 41, Ch. 182, L. 1975; Sec. 71-1006, R.C.M. 1947; (2)En. Sec. 7, Part 9, Ch. 82, L. 1937, as added by Sec. 1, Ch. 5, L. 1941; amd. Sec. 7, Ch. 225, L. 1961; amd. Sec. 42, Ch. 182, L. 1975; Sec. 71-1007, R.C.M. 1947; R.C.M. 1947, 71-1006, 71-1007; amd. Sec. 64, Ch. 613, L. 1989.

39-73-107. Amount of payments. Subject to the provisions of this chapter and the deductions herein provided, any person who has silicosis, as defined in this chapter, and who has, subject to the regulations and standards of the department of labor and industry, been determined by the department to be entitled payment under this chapter for silicosis shall be granted a payment by the department of $200 per month, subject to such appropriations as may from time to time be made. If he is receiving payments under The Occupational Disease Act of Montana, as provided by chapter 72 of this title, which are less in the aggregate than $200, then he is entitled to a payment under this chapter of the difference between the amount received under The Occupational Disease Act of Montana, as provided by chapter 72 of this title, and $200 per month. The legislature shall authorize such additional appropriations as may be necessary to make the increased monthly payments provided herein.

History: Ap. p. Sec. 3, Part 9, Ch. 82, L. 1937, as added by Sec. 1, Ch. 5, L. 1941; amd. Sec. 1, Ch. 68, L. 1945; amd. Sec. 1, Ch. 216, L. 1947; amd. Sec. 1, Ch. 192, L. 1949; amd. Sec. 1, Ch. 42, L. 1953; amd. Sec. 1, Ch. 252, L. 1955; amd. Sec. 1, Ch. 3, L. 1961; amd. Sec. 3, Ch. 225, L. 1961; amd. Sec. 1, Ch. 267, L. 1965; amd. Sec. 1, Ch. 125, L. 1967; amd. Sec. 1, Ch. 260, L. 1969; amd. Sec. 1, Ch. 105, L. 1971; amd. Sec. 2, Ch. 360, L. 1971; amd. Sec. 1, Ch. 504, L. 1973; Sec. 71-1003, R.C.M. 1947; Ap. p. Sec. 4, Part 9, Ch. 82, L. 1937, as added by Sec. 1, Ch. 5, L. 1941; amd. Sec. 2, Ch. 216, L. 1947; amd. Sec. 2, Ch. 192, L. 1949; amd. Sec. 1, Ch. 204, L. 1953; amd. Sec. 2, Ch. 252, L. 1955; amd. Sec. 1, Ch. 248, L. 1959; amd. Sec. 4, Ch. 225, L. 1961; amd. Sec. 2, Ch. 267, L. 1965; amd. Sec. 2, Ch. 125, L. 1967; amd. Sec. 2, Ch. 260, L. 1969; amd. Sec. 2, Ch. 105, L. 1971; amd. Sec. 2, Ch. 504, L. 1973; Sec. 71-1004, R.C.M. 1947; R.C.M. 1947, 71-1003(part), 71-1004; amd. Sec. 3, Ch. 559, L. 1981; amd. Sec. 64, Ch. 613, L. 1989.

39-73-108. Payment of benefits where person entitled is in institution. If any person who is entitled to benefits under this chapter shall be an inmate in any Montana state institution, benefits shall not be paid to him but shall be paid his beneficiary, if any, as defined in 39-71-116.

History: En. Sec. 3, Part 9, Ch. 82, L. 1937, as added by Sec. 1, Ch. 5, L. 1941; amd. Sec. 1, Ch. 68, L. 1945; amd. Sec. 1, Ch. 216, L. 1947; amd. Sec. 1, Ch. 192, L. 1949; amd. Sec. 1, Ch. 42, L. 1953; amd. Sec. 1, Ch. 252, L. 1955; amd. Sec. 1, Ch. 3, L. 1961; amd. Sec. 3, Ch. 225, L. 1961; amd. Sec. 1, Ch. 267, L. 1965; amd. Sec. 1, Ch. 125, L. 1967; amd. Sec. 1, Ch. 260, L. 1969; amd. Sec. 1, Ch. 105, L. 1971; amd. Sec. 2, Ch. 360, L. 1971; amd. Sec. 1, Ch. 504, L. 1973; R.C.M. 1947, 71-1003(c); amd. Sec. 9, Ch. 480, L. 1991.

39-73-109. Payment of benefits to surviving spouse. (1) Upon the death of a person receiving payments for silicosis under 39-73-104 or 39-73-108, the surviving spouse, as long as such spouse remains unmarried, is entitled to receive the payments granted the deceased spouse.

(2) A person who otherwise is qualified to receive payments under subsection (1) of this section but whose spouse died prior to March 14, 1974, is hereby made eligible to begin receiving one-half of those payments; provided,

however, a person is not eligible for these payments if such spouse's taxable income is $6,800 or more per year.

History: **(1)En. 71-1010 by Sec. 1, Ch. 203, L. 1974; Sec. 71-1010, R.C.M. 1947; (2)En. 71-1010.1 by Sec. 1, Ch. 500, L. 1975; Sec. 71-1010.1, R.C.M. 1947; R.C.M. 1947, 71-1010, 71-1010.1; amd. Sec. 91, Ch. 397, L. 1979.**

39-73-110. Assistance not assignable or subject to legal process. Except as otherwise provided in this chapter, assistance granted under this chapter is not transferable or assignable, at law or in equity, and none of the money paid or payable under this chapter is subject to execution, levy, attachment, garnishment, or other legal process, or to the operation of any bankruptcy or insolvency law.

History: **En. Sec. 18, Part 1, Ch. 82, L. 1937; amd. Sec. 26, Ch. 121, L. 1974; R.C.M. 1947, 71-229.**

39-73-111. Representative payee — appointment — duties. (1) The department of labor and industry may appoint a representative payee to apply for and receive payment of silicosis benefits on behalf of a person eligible for such payments or his beneficiary if the department determines that such appointment is in the best interests of the person or his beneficiary. The representative payee may be a person, a corporation, a government agency, or an institution, including a nursing home or extended care facility providing care for the person or his beneficiary.

(2) To determine the best interests of the eligible person or his beneficiary for appointment of a representative payee, the department may consider:

(a) a court determination of incompetence;

(b) medical evidence;

(c) relevant information from any person, corporation, government agency, or institution; and

(d) other relevant information.

(3) The department shall:

(a) determine the circumstances in which a representative payee may be appointed;

(b) establish procedures for his appointment; and

(c) establish the representative payee's responsibilities.

(4) The representative payee shall:

(a) act as a trustee to the person eligible for silicosis payments or his beneficiary in handling payments received; and

(b) maintain and expend such funds for the benefit and best interests of the eligible person or his beneficiary.

(5) The department's obligation under this chapter is fully discharged upon payment of benefits to the representative payee.

History: **En. Sec. 1, Ch. 69, L. 1989; amd. Sec. 64, Ch. 613, L. 1989.**

DOES NOT
CIRCULATE